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PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18,198

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY,
Respondents.

To the Honorable, the Judges of the United States Court of Appeals for the Fifth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Secs. 151, et seq., as amended by 72 Stat. 945), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondents Walton Manufacturing Company and Loganville Pants Company, their officers, agents, successors, and assigns, Case Nos. 10-CA-3127, 3201, 3219, 3202 and 3218.

In support of this petition the Board respectfully shows:

(1) Respondents are Georgia corporations engaged in business in the State of Georgia within this judicial circuit

where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on October 21, 1959, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondents, their officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondents by sending copies thereof postpaid, bearing Government frank, by registered mail, to Respondents' counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 38 (1) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order

which relate specifically to the Respondents herein, and requiring Respondents, their officers, agents, successors, and assigns to comply therewith.

(Signed) Thomas J. McDermott
Thomas J. McDermott
Associate General Counsel
NATIONAL LABOR
RELATIONS BOARD

Dated at Washington, D. C.
this __ day of

ORDER TO FILE PETITION

Filed: Feb. 4, 1960

In The United States Court of Appeals
For The Fifth Circuit.

No. 18,198

National Labor Relations Board,
Petitioner,

versus

Walton Manufacturing Company and
Loganville Pants Company,
Respondent.

A Petition for Enforcement of an Order of the National Labor Relations Board made on October 21, 1959, in the proceeding known upon the records of the Board as Case Nos. 10-CA-3127, 3201, 3219, 3202 and 3218 having been presented to this Court;

IT IS ORDERED that said Petition be filed and the case docketed as of February 4, 1960, and;

IT IS FURTHER ORDERED that the National Labor Relations Board file with the Clerk, a certified copy of the transcript of proceedings, or in lieu thereof, a certified list of all the documents, transcripts of testimony, exhibits and other material comprising the record of the proceeding

before the National Labor Relations Board, in the above entitled matter, within forty days from this date as required by Rule 38, as amended.

(Signed) EDWARD W. WADSWORTH
Clerk of the United States Court
of Appeals for the Fifth Circuit.

ANSWER OF RESPONDENTS TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Number and Title Omitted)

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

The National Labor Relations Board having filed with this Court its petition for enforcement of an order of said Board against Respondents, Walton Manufacturing Company and Loganville Pants Company, the Respondents hereby file their answer to said petition and respectfully request this Court to set aside in its entirety the Board's said order. A brief will be filed with this Court by Respondents setting forth more fully Respondents' position with respect to said order.

In response to the petition, Respondents, Walton Manufacturing Company and Loganville Pants Company, respectfully show:

1.

Respondents admit that they are Georgia corporations engaged in business in the State of Georgia, within the jurisdiction of this Court, as alleged in paragraph 1 of the petition.

2.

Respondents admit that on or about October 21, 1959, the Board stated its finding of fact and conclusions of law, and issued to Respondents the order as set forth in paragraph 2 of the petition. Respondents also admit the allegation of paragraph 2 of the petition that on or about that date, through their counsel, they were served with a copy of the said order. Respondents deny, however, that said order is a legal order and that the said findings of fact and conclusions of law are correct in any respect. Respondents deny that the procedures followed by the National Labor Relations Board in arriving at said findings of fact, conclusions of law, and order are in accordance with law. Respondents further deny that said findings of fact, conclusions of law, and order are supported by substantial evidence, as required by law, and particularly by the National Labor Relations Act, as amended.

3.

Respondents, relying upon a certificate from the Clerk of this Court, admit the allegations contained in paragraph 3 of the petition that the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits, and other material comprising the en-

tire record of the proceeding before the Board as alleged in paragraph 3 of the petition.

For further answer to the petition for enforcement, Respondents respectfully show:

1.

Respondents deny that they or either of them have engaged in any of the conduct from which they are ordered to cease and desist as set forth in Petitioner's order.

2.

Respondents deny that they have, in any respect, violated Section 8 (a) (1) or Section 8 (a) (3), or any other section of the National Labor Relations Act, as amended, as set forth in the Board's findings of fact and conclusions of law, and state that Petitioner's findings of fact, conclusions of law, and order of October 21, 1959, are erroneous, invalid, and illegal, and the same are not based upon the evidence but are contrary to the evidence.

3.

Respondents deny that they have, in any manner, engaged in any unfair labor practices as defined in the National Labor Relations Act, as amended.

WHEREFORE, Respondents pray that this Court deny the petition for enforcement of said order, and each and every prayer thereof; that this Court set aside said order in its entirety on the grounds that: the procedures fol-

lowed by the Board in this case were not in accordance with the law, that the findings of fact of Petitioner are not supported by substantial evidence, and that the conclusions of law of Petitioner are erroneous and the said order is illegal and void; Respondents further pray that the petition be dismissed and that they be discharged.

This the 23rd day of February, 1960.

WILSON, BRANCH AND
BARWICK
(Signed) By ROBERT T. THOMPSON
(Signed) By ALEXANDER E. WILSON, JR.

CERTIFICATE OF SERVICE

United States Court of Appeals
For The Fifth Circuit

National Labor Relations Board,
Petitioner,
versus Case No. 18,198

Walton Manufacturing Company and
Loganville Pants Company,
Respondent.

The undersigned certifies that five (5) copies of the Respondents' answer in the above case were this day served by first class mail upon the following counsel at the address listed below:

Thomas J. McDermott
Associate General Counsel
National Labor Relations Board
Washington 25, D. C.

This the 23rd day of February, 1960.

(Signed) ROBERT T. THOMPSON

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals
For The Fifth Circuit

No. 18,198

National Labor Relations Board,
Petitioner,

versus

Walton Manufacturing Company and
Loganville Pants Company,
Respondents.

The National Labor Relations Board by its Executive Secretary, duly authorized by Section 102.92, Rules and Regulations of the National Labor Relations Board — Series 7, hereby certifies that the list set forth below constitutes a full and accurate transcript of the entire record of a consolidated proceeding had before said Board and known upon its records as Case Nos. 10-CA-3127, 3201, 3219, 3202 and 3218. Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

VOLUME I — Exhibits introduced in evidence, also rejected exhibits:

GENERAL COUNSEL'S EXHIBITS

*1-A thru 1-L, inclusive
2-A and 2-B
2-C rejected
2-D and 2-E
2-F rejected
2-G thru 2-J, inclusive
3, 4 and 5
6-A and 6-B
7 thru 10, inclusive
11-A and 11-B rejected
12 thru 16, inclusive, rejected
17-A thru 17-D rejected
18-A and 18-B, rejected
19
20-A thru 20-C, rejected
21 thru 25, rejected
26-A and 26-B, rejected; 27 and 28, rejected
29; 30-A and 30-B; 31-A and 31-B; 32-A and 32-B; 33-A and 33-B; 34-A and 34-B; 35-A and 35-B; 36-A thru 36-C; 37-A and 37-B; 38-A and 38-B; 39-A and 39-B; 40-A and 40-B; 41-A and 41-B; 42-A and 42-B; 43-A and 43-B; 44; 45-A and 45-B; 46; 47-A and 47-B; 48-A and 48-B; 49-A thru 49-C; 50-A and 50-B; 51-A and 51-B; 52-A thru 52-C; 53-A thru 53-C; 54-A thru 54-C; 55-A and 55-B; 56-A and 56-B; 57-A and 57-B; 58-A and 58-B; 59-A thru 59-C; 60-A thru 60-C; 61-A 61-C, 62-A thru 62-C; 63-A thru 63-C; 64-A thru 64-C; 65-A thru 65-C; 66-A thru 66-C; 67-A and 67-B; 68-A thru 68-C; 69; 70-A and 70-B; 71-A thru 71-C; 72-A

*General Counsel's Exh. 1-A through 1-L, 2-A, 2-D, 2-G and 2-I and 3 are contained in Volume III.

thru 72-C; 73-A and 73-B; 74-A thru 74-C; 75; 76; 77; 78-A and 78 B

RESPONDENTS' EXHIBITS

1 thru 12, inclusive; 13; 14-A and 14-B; 15 and 16; 17-A and 17-B; 18-A and 18-B; 19-A and 19-B; 20 thru 22, inclusive; 23-A and 23-B; 24; 25-A and 25-B; 26; 27-A and 27-B; 28-A and 28-B; 29; 30-A and 30-B; 31-A and 31-B; 32; 33-A and 33-B; 34-A and 34-B; 35-A and 35-B; 36-A and 36-B; 37-A and 37-B; 38; 39-A and 39-B; 40-A and 40-B; 41-A and 41-B; 42-A and 42-B; 43-A and 43-B; 44-A and 44-B; 45-A and 45-B; 46; 47-A and 47-B; 48 and 49; 50-A and 50-B; 51-A and 51-B; 52-A and 52-B; 53-A and 53-B; 54; 55-A and 55-B; 56; 57-A and 57-B; 58-A and 58-B; 59-A and 59-B; 60 thru 62, inclusive; 63-A and 63-B; 64-A and 64-B; 65 and 66; 67-A and 67-B; 68 thru 70, inclusive; 71-A and 71-B; 72-A and 72-B; 73 thru 75, inclusive; 76-A and 76-B; 77-A and 77-B; 78 and 79; 80-A and 80-B; 81; 82-A and 82-B; 83-A and 83-B; 84 thru 88, inclusive

CHARGING PARTY'S EXHIBITS

1 and 2

VOLUME II *CERTIFIED RECORD*

Stenographic transcript of testimony taken before Trial Examiner Samuel Ross on October 15, 16, 17, 20, 21, 22 and 23, 1958 1 - 1528

VOLUME III - Pleadings

1. Copy of Trial Examiner's Intermediate Report and Recommended Order dated May 15, 1959 1 - 50

2.	General Counsel's exceptions to the Intermediate Report received June 19, 1959	1 - 9
3.	Correction to General Counsel's exceptions to Intermediate Report received June 24, 1959	1 - 2
4.	Amalgamated Clothing Workers of America AFL-CIO (Charging Party herein) exceptions to the Intermediate Report received June 29, 1959	1 - 3
5.	Respondents' exceptions to the Intermediate Report received June 29, 1959	1 - 36
6.	Copy of Decision and Order issued by the National Labor Relations Board on October 21, 1959	1 - 12

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this ___ day of ___

(Signed) Frank M. Kleiler
Frank M. Kleiler
Executive Secretary
NATIONAL LABOR
RELATIONS BOARD

(SEAL)

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10-CA-3127

Date Filed
12-11-57

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
Walton Mfg. Company

Number of Workers Employed
App. 165

Address of Establishment (Street and number, city, zone, and State)
Loganville, Ga.

Type of Establishment (Factory, mine, wholesaler, etc.)
Manufacturer

Identify principal product or service
Manufacturer of suits

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.
(List subsections)

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On Dec. 3, 1957, in violation of Section 8 (a) (1) and (3) of the National Labor Relations Act, the above named employer discharged Lucille Yancey because of her membership in and activities in behalf of the Amalgamated Clothing Workers of America, AFL-CIO, a labor organization, in order to discourage membership in said organization.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
Amalgamated Clothing Workers of America, AFL-CIO

4. Address (Street and number, city, zone, and State)
15 Union Square, New York 3, N. Y.

Telephone No.
AL 5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
AFL-CIO

6. Address of National or International, if any (Street and number, city, zone, and State)
718 Jackson Place, N. W., Washington, D. C.

Telephone No.
Republic 7-5353

7. Declaration
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
Garvin Biggs
(Signature of representative or person filing charge)
Rep.
(Title, if any)

Dec. 9, 1957
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

December 12, 1957

Walton Mfg. Company
Loganville, Ga.

Re: Case No. 10-CA-3127

Gentlemen:

Please be advised that a Charge has been filed with this office alleging that you have engaged in unfair labor practices in violation of the National Labor Relations Act, as amended. Enclosed herewith you will find a copy of such charge for your notice and information.

The investigation of this matter has been assigned to Supervising Attorney Frank E. Hamilton, Jr., whose address is shown above.

I would appreciate receiving from you a written statement of your position respecting the allegations set forth in the Charge. Please feel free to present in support of such statement affidavits and such records as may be necessary for full presentation of your position.

During the course of this investigation I will appreciate your cooperating fully with the members of this staff. In the event you desire any further information please feel free to call upon the Supervisor handling this matter.

Very truly yours,

(Signed) WALTER C. PHILLIPS
Walter C. Phillips
Regional Director

Enclosure:
Charge (1)

REGISTERED MAIL
RETURN RECEIPT REQUESTED
435975

I certify that I served the above referred to charge this day by postpaid registered mail on the addressee named above, together with a transmittal letter of which this is a true copy.

(Signed) E. J. McDERMOTT

Subscribed and sworn to before me this 13th day of Dec. 195

(Signed) J. FRANCES
Designated Agent

Post Office Department
Official Business
NLRB 10th Region ATLANTA

Penalty For Private Use To Avoid
Payment of Postage, $300
Postmark of Delivering Office
Loganville, Ga.
Dec. 13, 1957 - 3 P.M.

INSTRUCTIONS. — Show name, address and number of article below. Complete "Instructions To Delivering Employee" on other side, when applicable. Moisten gummed ends and securely attach to back of article. Endorse front of article RETURN RECEIPT REQUESTED.

RETURN TO
NAME OF SENDER
NATIONAL LABOR RELATIONS BOARD

STREET AND NO. OR P. O. BOX
528 PEACHTREE-SEVENTH BUILDING
50 SEVENTH STREET, N. E.
CITY, ZONE, AND STATE
ATLANTA 23, GEORGIA

REGISTERED NO.
435975

CERTIFIED NO.
INSURED NO.

10-CA-3127 Charge 12-12-57 (FEH)
Walton Mfg. Company

INSTRUCTIONS TO DELIVERING EMPLOYEE

( ) Deliver ONLY to addressee (20c additional)
( ) Show address where delivered in item 4 below (31c additional)

RECEIPT

Received from the Postmaster the Registered, Certified, or Insured Article, the number of which appears on the face of this return receipt.

1. Signature or Name of Addressee
   ARTHUR SCHARFF

2. Signature of addressee's agent (Agent should enter addressee's name in item 1 above)

3. Delivery Date
   12-13-57

AMENDED CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10-CA-3127

Date Filed
January 22, 1958

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
WALTON MANUFACTURING COMPANY

Number of Workers Employed
Approximately 165

Address of Establishment (Street and number, city, zone, and State)
LOGANVILLE, GEORGIA

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

Identify principal product or service
Clothing

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor
(List subsections)
Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about December 3, 1957, the Employer discriminated with respect to the hire and tenure of employment of LUCILLE YANCEY to discourage membership in a labor organization.

By the above, and by other acts and conduct, the Employer has interfered with, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

4. Address (Street and number, city, zone, and State)
15 Union Square, New York 3, New York

Telephone No.
AL 5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
American Federation of Labor and Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)
718 Jackson Place, NW, Washington, D.C.

Telephone No.
REpublic 7-5353

7. Declaration
I declare that I have read the above charge and that the

statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
Garvin Biggs
(Signature of representative or person filing charge)
Representative
(Title, if any)

January 22, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

(Letter and Return Receipt Omitted)

• • • •

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent

unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10 CA-3201

Date Filed
January 22, 1958

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
WALTON MANUFACTURING COMPANY

Number of Workers Employed
Approximately 165

Address of Establishment (Street and number, city, zone, and State)
LOGANVILLE, GEORGIA

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

Identify principal product or service
Clothing

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.
(List subsections)

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about the dates set opposite their respective names, the Employer discriminated against the employees named below with respect to their hire or tenure of employment to discourage membership in a labor organization:

GRACE McCART	January 10, 1958
PEARL COKER	January 15, 1958

By the above and by other acts and conduct, the Employer has interfered with, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

4. Address (Street and number, city, zone, and State)
15 Union Square, New York 3, New York

Telephone No.
AL 5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
American Federation of Labor and Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)
718 Jackson Place, NW, Washington, D. C.

Telephone No.
REpublic 7-5353

7. Declaration
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
Garvin Biggs
(Signature of representative or person filing charge)
Representative
(Title, if any)

January 22, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

* * * *

(Letter and Return Receipt Omitted)

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10-CA-3202

Date Filed
January 22, 1958

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
LOGANVILLE PANTS COMPANY, and
WALTON MANUFACTURING COMPANY

Number of Workers Employed
Approximately 165

Address of Establishment (Street and number, city, zone, and State)
LOGANVILLE, GEORGIA

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

Identify principal product or service
Clothing

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor
(List subsections)
Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about January 17, 1958, the Employer discriminated with respect to the hire or tenure of employment of RUTH BROOKS to discourage membership in a labor organization.

By the above, and by other acts and conduct, the Employer interfered with, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

4. Address (Street and number, city, zone, and State)
15 Union Square, New York 3, New York

Telephone No.
AL 5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
American Federation of Labor and Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)
718 Jackson Place, NW, Washington, D. C.

Telephone No.
REpublic 7-5353

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
(Signature of representative or person filing charge)
Garvin Biggs
Representative
(Title, if any)

January 22, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

* * * *

(Letter and Return Receipt Omitted)

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10-CA-3219

Date Filed
2-4-58

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
Walton Manufacturing Company

Number of Workers Employed
Approximately 165

Address of Establishment (Street and number, city, zone, and State)
Loganville, Georgia

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

Identify principal product or service
Clothing

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor
(List subsections)
Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about the dates set opposite their respective names the employer discriminated against the employees named below with respect to their hire or tenure of employment to discourage membership in a labor organization:

Bonnie Hamilton	1-31-58
Pauline McGee	1-31-58
Violet Ewing	1-31-58
Ida Harper	1-31-58
Francis E. Johnson	1-31-58
Nellie Ruth Hood	1-31-58
Evelyn Hudson	1-31-58
Nellie R. Wood	1-31-58

By the above and other acts and conduct the employer has interfered with, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
   Amalgamated Clothing Workers of America, AFL-CIO

4. Address (Street and number, city, zone, and State)
   15 Union Square, New York 3, New York

Telephone No.
AL-5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
   American Federation of Labor-Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)
   718 Jackson Place, N. W., Washington, D. C.

Telephone No.
RE-7-5353

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
(Signature of representative or person filing charge)
Garvin Biggs
Representative
(Title, if any)

February 4, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

* * * *

(Letter and Return Receipt Omitted)

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10-CA-3218

Date Filed
2-4-58

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
Loganville Pants Company and
Walton Manufacturing Company

Number of Workers Employed
Approximately 165

Address of Establishment (Street and number, city, zone, and State)
Loganville, Georgia

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

Identify principal product or service
Clothing

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor
(List subsections)
Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about January 24, 1958 the employer discriminated with respect to the hire or tenure of employment of Mrs. Lela Beaver to discourage membership in a labor organization.

By the above and other acts and conduct the employer has interfered with, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
Amalgamated Clothing Workers of America, AFL-CIO

4. Address (Street and number, city, zone, and State)
15 Union Square, New York 3, New York

Telephone No.
AL-5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
American Federation of Labor-Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)
718 Jackson Place, N. W., Washington, D. C.

Telephone No.
RE-7-5353

7. Declaration
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
Garvin Biggs
(Signature of representative or person filing charge)
Representative
(Title, if any)

February 4, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

* * * *

(Letter and Return Receipt Omitted)

ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING

(Number and Title Omitted)

It having been charged by Amalgamated Clothing Workers of America, AFL-CIO, herein called the Union, that Walton Manufacturing Company, herein called Respondent Walton, and Loganville Pants Company, herein called Respondent Loganville, (hereinafter jointly referred to as the Respondents) have been engaged in and are engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, and it being deemed necessary to consolidate said cases in order to effectuate the purposes of the Act and to avoid excessive costs and delay;

IT IS HEREBY ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 7, that these cases be, and they are hereby, consolidated.

Upon said charges the General Counsel of the National Labor Relations Board (herein called the Board) on behalf of the Board, by the undersigned Regional Director issues this Order Consolidating Cases, Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Sections 102.15 and 102.33 of the Board's Rules and Regulations, Series 7.

1.

(a) A copy of the charge in Case 10-CA-3127, filed on December 11, 1957, was served upon Respondent Walton on December 13, 1957. A copy of an amended charge in Case 10-CA-3127, filed on January 22, 1958, was served upon Respondent Walton on January 23, 1958.

(b) A copy of the charge in Case 10-CA-3201, filed on January 22, 1958, was served on Respondent Walton on January 23, 1958.

(c) A copy of the charge in Case 10-CA-3202, filed on January 22, 1958, was served upon the Respondents on January 24, 1958.

(d) A copy of the charge in Case 10-CA-3218, filed on February 4, 1958, was served on the Respondents on February 5, 1958.

(e) A copy of the charge in Case 10-CA-3219, filed on February 4, 1958, was served on Respondent Walton on February 6, 1958.

2.

The Respondents are Georgia Corporations, engaged in the manufacture of men's clothing, and at all times material herein have maintained their principal places of business at Loganville, Georgia. The operations of the Respondents, and their labor relations policies, are so interrelated and integrated as to constitute them a single employer for the purposes of this proceeding.

3.

The Respondents, during the past twelve months, which period is representative of all times material herein, sold and shipped products valued at more than $50,000 directly to places located outside the State of Georgia.

4.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

5.

Respondent Walton, by its supervisor and agent, Forelady Grace Higgins on or about January 10, 1958, threatened to close its plant if the Union became the representative of its employees.

6.

Respondent Walton, by its supervisor and agent, Foreman Gerald Carter, on or about November 25, 1957, and January

27, 1958. interrogated its employees concerning their Union membership, activities, and desires.

7.

Respondent Walton, by its supervisor and agent, Forelady Myrtle Ewing, on or about November 29, 1957, and December 30, 1957, threatened its employees with discharge if they joined or retained membership in or engaged in activities on behalf of the Union.

8.

Respondent Loganville, by its supervisor and agent, Forelady Edna Atha, on or about December 4 and 14, 1957, and January 10, 1958, interrogated its employees concerning their Union membership, activities and desires and the Union membership, activities and desires of other employees.

9.

Respondent Loganville, by its following named supervisors and agents, on or about the dates set opposite their respective names, threatened its employees with discharge if they joined or retained membership in, or engaged in activities on behalf of, the Union:

Forelady Edna Atha	December 4, 1957
Plant Superintendent S. G. Hughley	January 10, 1958

10.

Respondent Loganville, by its supervisor and agent, Plant Superintendent S. G. Hughley, on or about January 8, 1958, promulgated a rule prohibiting employees from talking about the Union in its plant at all times.

11.

Respondent Loganville, by its supervisor and agent, Plant Superintendent S. G. Hughley, on or about January 8, 1958, threatened its employees that it would cease attempting to procure orders for its products if said employees persisted in talking about the Union.

12.

The Respondents, by their supervisor and agent, Morris Scharff, on or about December 3 and 10, 1957, and January 15 and 30, 1958, threatened to close their plants if the Union became the representative of their employees.

13.

The Respondents, by their supervisor and agent, Morris Scharff, on or about December 5, 1957, and January 14, 27 and 30, 1958, interrogated their employees concerning their Union membership, activities and desires and the Union membership, activities and desires of other employees or of relatives of the employees.

14.

The Respondents, by their supervisor and agent, Morris Scharff, on or about November 30, 1957, engaged in surveillance of Union activities among their employees by recording the license numbers of automobiles operated by representatives of the Union.

15.

The Respondents, by their supervisor and agent, Morris Scharff, on or about January 14, 1958, informed their employees that they had a list of all their employees who attended a Union meeting, and thereby caused their employees to believe that the Respondents had engaged in surveillance of said employees' Union activities.

16.

The Respondents, by their supervisor and agent, Morris Scharff, on or about January 14, 1958, threatened their employees with discharge if they joined or retained membership in or engaged in activities on behalf of the Union.

17.

The Respondents, by their supervisor and agent, Morris Scharff, on or about January 14, 1958, threatened their employees that it would be difficult for said employees who joined or retained membership in the Union, or engaged in activities on behalf of the Union, to secure other employment.

18.

The Respondents, by their supervisor and agent, Morris Scharff, on or about December 3, and December 10, 1957, threatened their employees that they would eliminate and discontinue their policy of lending money to their employees if the Union became the representative of said employees.

19.

The Respondents, by their supervisor and agent, Morris Scharff, on or about December 5, 1957, promised a laid-off employee that she would be given a job if the Union did not become the representative of their employees.

20.

The Respondents, by their supervisor and agent, Morris Scharff, on or about January 27, 1958, informed their employees that employment opportunities for prospective employees were conditioned upon whether or not the Union became the representative of their employees.

21.

The Respondents, by their supervisor and agent, Morris Scharff, on or about January 28, 1958, induced and encouraged their employees to withdraw from and renounce the Union, and assisted them therein.

22.

The Respondents, by their agent, J. B. Stevens, on or about November 30, 1957, engaged in surveillance of Union activities among their employees.

23.

On or about the dates set opposite their respective names, Respondent Walton discharged and thereafter failed and refused to reinstate the following-named employees:

Lucille Yancey	December 4, 1957
Pearl Coker	January 15, 1958
Bonnie Hamilton	January 31, 1958
Pauline McGee	January 31, 1958
Violet Ewing	January 31, 1958
Ida Harper	January 31, 1958
Frances Elizabeth Johnson	January 31, 1958
Nellie Hood	January 31, 1958
Nellie Wood	January 31, 1958
Evelyn Hudson	January 31, 1958

24.

On or about January 10, 1958, Respondent Walton discharged its employee, Grace McCart, and failed and refused to reinstate said McCart unit on or about March 3, 1958.

25.

Respondent Walton discharged and thereafter failed and refused to reinstate its employees as described in paragraphs

23 and 24 above because of their membership in and activities on behalf of the Union, because they engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in the Union.

26.

On or about the dates set opposite their respective names, Respondent Loganville discharged and thereafter failed and refused to reinstate its following-named employees:

Ruth Brooks	January 16, 1958
Lela Beaver	January 27, 1958

27.

Respondent Loganville discharged and thereafter failed and refused to reinstate its employees, as described in paragraph 26 above, because of their membership in and activities on behalf of the Union, because they engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in the Union.

28.

The acts of Respondent Walton described in paragraphs 23, 24 and 25 above constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (3) and (1) and Section 2 (6) and (7) of the Act.

29.

The acts of Respondent Walton described in paragraphs 5, 6 and 7 above constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

30.

The acts of Respondent Loganville described in paragraphs 26 and 27 above constitutes unfair labor practices affecting commerce within the meaning of Section 8 (a) (3) and (1) and Section 2 (6) and (7) of the Act.

31.

The acts of Respondent Loganville described in paragraphs 8, 9, 10 and 11 above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

32.

The acts of the Respondents described in paragraphs 12 through 22 above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 11th day of August, 1958, at ten o'clock a.m. (EST) at Walton County Courthouse, Monroe, Georgia, a hearing will be conducted before a duly designated trial examiner of the National Labor Relations Board on the allegations set forth in the above Com-

plaint, at which time and place you will have the right to appear in person or otherwise and give testimony.

You are further notified that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondents shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof and that unless they do so all of the allegations in the Compiaint shall be deemed to be admitted to be true and may be so found by the Board.

Issued at Atlanta, Georgia, this 25th day of July, 1958.

(Signed) WALTER C. PHILLIPS
Walter C. Phillips,
Regional Director
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

(SEAL)

ORDER RESCHEDULING HEARING

United States of America
Before The National Labor Relations Board
Tenth Region

In the Matter of

Walton Manufacturing Company
and
Case Nos. 10-CA-3127, 10-CA-3201, 10-CA-3219
Amalgamated Clothing Workers of America, AFL-CIO

— — —

Loganville Pants Company and Walton Manufacturing Company
and
Case Nos. 10-CA-3202, 10-CA-3218
Amalgamated Clothing Workers of America, AFL-CIO

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from August 11, 1958, to September 15, 1958, without change as to the hour and place of the hearing.

DATED at Atlanta, Georgia, this 30th day of July, 1958.

(Signed) WALTER C. PHILLIPS
Walter C. Phillips,
Regional Director,
National Labor Relations Board,
Atlanta, Georgia

(SEAL)

ORDER RESCHEDULING HEARING

United States of America
Before The National Labor Relations Board
Tenth Region

In the Matter of

Walton Manufacturing Company
and
Case Nos. 10-CA-3127, 10-CA-3201, 10-CA-3219
Amalgamated Clothing Workers of America, AFL-CIO

— — —

Loganville Pants Company and Walton Manufacturing Company
and
Case Nos. 10-CA-3203, 10-CA-3218
Amalgamated Clothing Workers of America, AFL-CIO

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from September 15, 1958, to October 14, 1958, without change as to the hour and place of the hearing.

DATED at Atlanta, Georgia, this 5th day of September, 1958.

(Signed) WALTER C. PHILLIPS
Walter C. Phillips,
Regional Director,
National Labor Relations Board.
Atlanta, Georgia

(SEAL)

ORDER RESCHEDULING HEARING

United States of America
Before The National Labor Relations Board
Tenth Region

In the Matter of

Walton Manufacturing Company
and
Case Nos. 10-CA-3127, 10-CA-3201, 10-CA-3219
Amalgamated Clothing Workers of America, AFL-CIO

— — —

Loganville Pants Company and Walton Manufacturing Company
and
Case Nos. 10-CA-3202, 10-CA-3218
Amalgamated Clothing Workers of America, AFL-CIO

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from October 14, 1958, to October 15, 1958, without change as to the place and the hour of the hearing.

DATED at Atlanta, Georgia, this 7th day of October, 1958.

(Signed) FRANK E. HAMILTON, JR.
Frank E. Hamilton, Jr.
Acting Regional Director,
National Labor Relations Board,
Atlanta, Georgia

(SEAL)

ANSWER OF RESPONDENTS

(Number and Title Omitted)

Complaint having been issued on July 25, 1958, in the above-styled matters, the Respondents named therein, WALTON MANUFACTURING COMPANY and LOGANVILLE PANTS COMPANY, file their Answer thereto as follows:

1.

Paragraph 1 of the Complaint is admitted.

2.

Answering paragraph 2 of the Complaint, it is admitted that Respondents are Georgia corporations, and that at various times they have been engaged in the manufacture of men's clothing, and that they have maintained their principal places of business in Loganville, Georgia. Respondent Loganville Pants Company has been inactive as a production plant since January 31, 1958. The Respondents deny that their operations, and their labor relations policies, are, or have at any time been, so interrelated and integrated as to constitute them a single employer for the purposes of this or any other proceeding.

3.

Respondent Walton admits paragraph 3 of the Complaint. Respondent Loganville denies paragraph 3 of the Complaint.

4.

Paragraph 4 of the Complaint is denied. Respondents state that the primary and sole purpose for which this union exists is to destroy the business of Respondents, and not to function as a labor organization within the meaning of Section 2(5) of the Act.

5.

Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the Complaint are denied.

6.

Answering paragraph 23 of the Complaint, Respondent Walton admits that the employees named therein were terminated on or about the dates set beside their names due to a cut-back in productions. Respondent Walton denies it has "failed and refused" to reinstate said employees.

7.

Answering paragraph 24 of the Complaint, Respondent Walton admits that Grace McCart was laid-off on January 10, 1958, and that she was reemployed on March 3, 1958, but denies that it "failed and refused to reinstate" her as alleged.

8.

Paragraph 25 of the Complaint is denied.

9.

Answering paragraph 26 of the Complaint, Respondent Loganville admits that the employees named therein were terminated on or about the date set beside their names but denies that it "failed and refused to reinstate" them as alleged.

10.

Paragraphs 27, 28, 29, 30, 31, and 32 of the Complaint are denied.

WHEREFORE, having answered the said Complaint in its entirety, Respondents pray that same be dismissed.

This the 4th day of August, 1958.

WILSON, BRANCH and BARWICK
(Signed) ALEXANDER E. WILSON, JR.
Alexander E. Wilson, Jr.
Attorneys for Respondents,
WALTON MANUFACTURING
COMPANY AND LOGANVILLE
PANTS COMPANY

615 Rhodes-Haverty Bldg.
Atlanta 3, Georgia.

CERTIFICATE

This is to certify that I, ALEXANDER E. WILSON, JR., have read the foregoing Answer of Respondents; that to the best of my knowledge, information and belief there is good ground to support it; and that same is not interposed for delay.

This the 4th day of August, 1958.

(Signed) ALEXANDER E. WILSON, JR.
Alexander E. Wilson, Jr.
Attorney of Record.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Answer of Respondents has been served by depositing same in the United States Mails, postage prepaid, on the following persons:

1. Amalgamated Clothing Workers of America,
   AFL-CIO
   Post Office Box 51
   Winder, Georgia

2. Miss Gladys Dickason, Vice President
   Amalgamated Clothing Workers
   15 Union Square
   New York 3, New York

3. Mr. William Isaacson
15 Union Square
New York 3, New York

This the 4th day of August, 1958.

(Signed) ALEXANDER E. WILSON, JR.
Alexander E. Wilson, Jr.

IR-604
Monroe, Ga.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

(Number and Title Omitted)

Statement of the Case

Upon charges filed against Respondent Walton Manufacturing Company (herein sometimes called Walton), and Respondent Loganville Pants Company (herein sometimes called Loganville Pants), by Amalgamated Clothing Workers of America, AFL-CIO (herein called the Union), the General Counsel of the National Labor Relations Board issued his consolidated complaint dated July 25, 1958, alleging that Respondents have engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) of the National Labor Relations Act, as amended (61 Stat. 136, herein called the Act). In substance the consolidated complaint, as amended at the

hearing,[1] alleges that Respondents, although two separate corporations, are so interrelated and integrated by reason of their common ownership, operation, control and labor relations policies, as to constitute a single employer for the purposes of this proceeding. The complaint further alleges that Respondents violated Section 8 (a) (1) of the Act by interrogation of employees concerning their "union affiliation, activities and desires," by engaging in surveillance of the activities of the Union's organizers, by causing employees to believe that Respondents had engaged in surveillance by threatening employees with discharge for joining or engaging in activities on behalf of the Union, by promulgating a rule against talking about the Union in the plant, not limited to working hours, by threatening to cease attempting to procure business and to close their plants if the Union became the representatives of their employees, by inducing and encouraging employees to withdraw from the Union, and by conditioning employment for a prospective employee and reemployment for a discharged employee upon the Union not becoming the representative of their employees. The complaint further alleges that Respondents violated Section 8 (a) (3) and (1) of the Act by discharging 13 employees on various dates from December 4, 1957, to January 31, 1958, because of their membership in or activities on behalf of the Union, and by refusing to reinstate the said discharged employees. In substance, Respondents' answer denies the integration and interrelation of the two companies, denies the commission of unfair labor practices,

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[1]At the conclusion of the General Counsel's case, the consolidated complaint was amended by consent by deleting line 6 from paragraph 9, thus eliminating therefrom the words "Forelady Edna Atha — December 4, 1957"; by deleting from paragraph 12, the words "15 and" following "January" on line 2; and by striking *in toto*, paragraph 18.

admits the termination of the employees named in the complaint, denies that Respondents refused to reinstate them, and alleges that the terminations of said employees were due to a cut back in production.

Pursuant to notice, a hearing was held before me in Monroe, Georgia, on October 15, 16, 17, 20, 21, 22 and 23, 1958. All parties were represented at the hearing by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues.

At the opening of the hearing, Respondents moved to sever the cases and for a separate hearing as to each Respondent on the ground that they were "entirely separate organizations . . . merely doing business with one another." I denied the motion. At the conclusion of the General Counsel's case, Respondents moved to dismiss various paragraphs of the consolidated complaint on the ground that the proof had failed to sustain the allegations and/or that the allegation failed to set forth a violation of the act. Decision was reserved on said motions. They are disposed of in accordance with the findings and conclusions herein.[2]

At the close of the hearing, the General Counsel moved to conform the pleadings (i. e., the complaint) to the proof in respect to minor discrepancies such as dates, names and similar matters. The motion was granted by consent.

On January 19, 1959, the General Counsel and the Respondents filed their respective briefs.

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[2]In his brief (p. 3), the General Counsel consents to the dismissal of paragraph 17 of the complaint. It is accordingly stricken.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. Commerce

Respondent Walton, a Georgia corporation, is engaged in the manufacture and sale of men's and boys' clothes. At the times material herein, the coat portion of the suits was made in Walton's plant in Loganville, Georgia, and the pants portion was made by Respondent Loganville Pants at a plant in Loganville, Georgia, approximately 2/3 of a mile from Walton's plant. After fabrication, the pants were shipped by Loganville Pants to Walton where they were pressed, trimmed, examined and finished and then shipped, together with Walton's coats, as suits to the latter's customers. The complaint alleges and the answer admits that during the past 12 months, a representative period, Walton shipped finished products valued at more than $50,000 directly to places outside the State of Georgia. The answer denies commerce as to Loganville Pants. At the opening of the hearing, the parties stipulated that during the period between September 17, 1957, and January 31, 1958,[3] Loganville Pants sold products to Walton valued at $14,382.47. Since on the record herein, Walton and Loganville Pants constitute a single, integrated employer for the purposes of this proceeding, I find that both Respondents are engaged in interstate commerce

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[3]On this date, Loganville Pants' machinery, equipment and employees were physically transferred to Walton's Plant, the pants portion of the suits was thereafter manufactured by Walton, and Loganville Pants allegedly went out of business.

and that it will effectuate the policies of the Act to assert jurisdiction herein.[4]

II. The labor organization involved

The uncontradicted evidence discloses that Amalgamated Clothing Workers of America, AFL-CIO, is an organization in which employees participate, which exists for the purpose of dealing with employers concerning rates of pay, hours of employment and other conditions of employment. Accordingly, I find that the Union is a labor organization within the meaning of Section 2 (5) of the Act.

III. The alleged unfair labor practices

A. *The interrelation between Respondents Walton and Loganville Pants*

Walton commenced operations at its plant in Loganville, Georgia, in June, 1957. Its principal officers, directors and stockholders are Harry Scharff and Arthur Scharff, the former's son. Loganville Pants commenced operations in September, 1957. Its principal officers, directors and stockholders, were Harry and Arthur Scharff, and Morris Rubel, a nephew of Harry and cousin of Arthur.

Because of Respondents' denial that the two companies constituted a single, integrated employer within the meaning of the Act, considerable testimony was adduced during the hearing on that issue. The record discloses that em-

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[4] *Venus Die Engineering Company*, 110 NLRB 336; *A. M. Andrews Company of Oregon*, 112 NLRB 626, enf'd. 236 F. 2d 44 (C. A. 9).

ployees and supervisors were frequently transferred between the two companies; that the books and records of Loganville Pants were maintained at Walton's plant by the latter's office employees; that the cutting of cloth for both companies was done by Walton's employees at the latter's plant; that Walton's maintenance mechanics also repaired the machinery and equipment of Loganville Pants; that a Christmas party for employees of both companies was held at Walton's plant, at which all the employees of both were given the present of a ham; that a joint letter was sent by Harry Scharff to the employees of both companies in connection with the Union's organizing campaign, expressing the hope that the employees of both companies would soon be able to work in the same plant; and that, as aforestated, all the pants produced by Loganville Pants were sold to Walton where they were pressed and finished by the latter's employees and then sold, together with Walton's coats, as Walton's suits to the latter's customers. On this record, there is no doubt and I find that these two commonly owned enterprises constituted a single, straightline, integrated employer within the meaning of the Act and the Board's decisions interpreting it.[5]

B. The agency status of Morris Scharff in respect to Respondents

Much of the conduct alleged as unfair labor practices on the part of Respondents is attributed to Morris Scharff, des-

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[5] See cases in fn. 4; also, *Irwin Lyons Lumber Company*, 87 NLRB 54.

On the last day of the 7-day hearing herein, Respondents conceded that Walton and Loganville Pants are one employer for the purposes of this proceeding. On the record already made, Respondents' belated stipulation was superfluous.

ignated in the complaint as Respondents' "supervisor and agent." Throughout the hearing and until the very last day thereof, when Morris Scharff was called to testify, Respondent's able counsel maintained that Morris Scharff was neither an official nor an agent of either Respondent. Although Respondents ultimately stipulated that for the purposes of this proceeding only, Morris Scharff was their agent within the meaning of the Act, I shall, nevertheless, summarize the testimony regarding Morris Scharff's authority to act on Respondents' behalf, because I regard it as important to a proper evaluation of the impact of his statements and conduct on Respondents' employees.

The record discloses that for many years, Morris had been engaged in the business of manufacturing men's and boys' clothing with his father, Harry, and brother Arthur, and, just prior to the initiation of Walton's business, the three of them had jointly owned such a business in New York City, under the corporate name of Southeastern Clothing Corp. (herein called Southeastern). When Walton commenced business, it sold the same type of clothes to the same customers as Southeastern had done. In April 1957, before Walton commenced operations, Morris moved his home from New York City to Atlanta, Georgia, within commuting distance from Respondents' plants. Until November 1957, Southeastern continued in business in New York City, with Morris Scharff as its then alleged sole owner. Sometime during the period between May and November 1957, while Morris was allegedly sole owner thereof, Southeastern performed work for Walton on a contract basis. Southeastern's machinery was physically transferred to Respondents on an undisclosed date in 1957. Morris Scharff had a private office at Walton's plant for which he paid no rent. Except for brief

periods when he was ill or out of the city, Morris was at the Walton plant daily during the usual working hours of the day. Morris was consulted by Arthur Scharff regarding the hiring of Mr. Hughley, the first plant superintendent of Walton, and I. S. Prosterman who succeeded Hughley in September 1957 when the latter was transferred to Loganville Pants as superintendent. Morris Scharff interviewed and hired many of the employees of Walton. He examined, praised and criticized the work of Walton's employees at Walton's plant. He gave raises to some of the employees. Employees who were discharged or laid off by Walton and Loganville Pants discussed their terminations with Morris. He made speeches in Respondents' plants to counteract the Union's organizing campaign. He wrote letters to Respondents' counsel in connection with the charges in this case. He was consulted regarding which persons were to be laid off and/or discharged. He acted as Respondents' representative throughout the hearing herein and consulted with Respondents' counsel. He was the person most familiar with all phases of Respondents' operations. Before Respondents' stipulation that he, Morris Scharff, was their agent, Arthur Scharff had testified that Morris was merely an unpaid advisor with whom he consulted only as a brother and that Morris had no official connection with Respondents. Other supervisors of Respondents similarly testified that Morris was merely a consultant. After Respondents stipulated that he was their agent for the purpose of this proceeding, Morris Scharff admitted that he supervised, handled personnel matters and set personnel policy for Walton's coat shop and made the decisions for Loganville Pants.

On the record, it is clear and I find, not only that Morris was an agent of Respondents within the meaning of the Act,

but that he was their principal operating official in charge of personnel, office and production, and was so regarded by Respondents' employees.[6]

C. *The alleged interference, restraint and coercion*

In November 1957, the Union sent a team of five organizers to organize Respondent's employees. The Union's campaign, which started about November 18, initially concentrated on visiting the homes of Respondents' employees to sign them up. Respondents promptly took measures to defeat the Union's organizational efforts. In the last week of November 1957, Respondents sent a letter to all their employees which set forth the benefits of employment with Respondents, announced new benefits, paid vacations and holidays, and stated that Respondents were also considering a pension plan for their employees (G. C. Exh. 7). The letter concluded with the statement, "no employee has to pay dues or initiation fees to any outside union — [or] outsiders for the privilege of working here."[7]

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[6] E. g., Loganville Pants employee Bessie Satterfield who testified *inter alia*, regarding her reason for withdrawing from the Union, said: "Because I felt like it wasn't right for us to — *Morris gave us the job* . . . for us to *work for him* and then to be pulling for the Union." Similarly Walton employee Nellie R. Wood testified, ". . . I was afraid I might have to *work for Morris again* some day. . . . Well, I felt that they (the Union) was doing *him* (Morris Scharff) dirty." (Emphasis added.)

[7] The complaint does not allege the announcement of the additional benefits, to defeat the Union's organizational efforts, as a violation of the Act, and I therefore, will make no findings based thereon.

a. *Surveillance*

On the morning of Saturday, November 30, 1957, between 8 a. m. and 9 a. m., Union Organizer Sarah Broom, while engaged in visiting by automobile the homes of Respondents' employees to solicit their support of the Union, was followed by Walton employee J. B. Stephens, driving in a 1957 green Plymouth car owned by Morris Scharff. Stephens, a brother of Supervisor Grace Higgins, performs maintenance and janitorial work. Organizer Broom observed that when she stopped at her first call, the home of one of Respondents' employees, the Plymouth stopped a short distance away, and that when she came out and proceeded to a second employee's home, she was followed by the same Plymouth car, about three car lengths behind her. When Broom arrived at the second employee's home, the Plymouth car also stopped a short distance from the employee's home. After leaving the second employee's home, enroute to a third employee's home, Mrs. Broom did not see Stephens or the car. However, a few minutes after she left the third employee's home and joined the other organizers at the Breeze Inn Restaurant near Walton's plant, Stephens drove up in the green Plymouth accompanied by Morris Scharff and Plant Superintendent Prosterman. The three of them got out of the Plymouth, entered the restaurant, ate and finished their lunch, and walked outside leaving the union organizers still inside. Stephens then pointed out to Morris Scharff the three cars of the union organizers and Morris wrote down the license numbers. Then Morris Scharff, Prosterman and Stephens drove away in the green Plymouth. When the organizers left the restaurant, they had some difficulty with one of their cars, not attributable to Respondents, and while working on it, they again ob-

served Stephens, parked and alone in the green Plymouth, watching them. That afternoon, Mrs. Broom's car was again followed by Stephens in the green Plymouth to her first call at an employee's home, but when she stopped, the Plymouth car continued on. After that, Mrs. Broom did not observe the Plymouth car or Stephens while she made two additional calls at employee's homes, but about 3 or 3:30 p. m., Stephens again drove into Breeze Inn about 5 minutes after Mrs. Broom arrived there.

Morris Scharff admitted taking down the license numbers of the organizers' cars. He testified that he did so because he was concerned with the possibility of union violence. He further testified that he went to the Breeze Inn "out of curiosity" after Stephens had come to the plant and told him that the organizers were there. Morris Scharff denied that he had authorized Stephens to follow any organizer, denied that Stephens had reported to him that he had done so, and denied that Stephens had reported the names of employees whom the organizers had visited. His explanation for Stephens' use of his Plymouth car was that the car was at the disposal of anyone who wanted to use it. Stephens was not called by Respondents to testify regarding his reasons for following Mrs. Broom's car, and no explanation for his failure to testify was offered.

On this record, I am convinced that, notwithstanding the lack of direct evidence that Stephens was following Organizer Broom's car pursuant to Respondents' instructions, the circumstantial evidence warrants the conclusion that he did so on Respondents' behest, and I so find. I base this finding and conclusion on the following circumstances: (1) Stephens' day long use of Morris Scharff's car to follow Organizer

Broom; (2) Stephens' report to Morris Scharff at the plant at midday (after his morning surveillance of Organizer Broom) that the organizers were at Breeze Inn; (3) Morris Scharff's visit to the restaurant accompanied by Stephens, allegedly to see the organizers; (4) Morris Scharff's evident interest in the license numbers of all the organizers' cars, shown by his notation of their license numbers and by the fact that the organizers' cars were pointed out to Scharff by Stephens; (5) Stephens' continued observation of the organizers at the restaurant and his following Organizer Broom in Morris Scharff's car directly after Scharff's visit to the restaurant; (6) Respondents' failure to call Stephens to testify and the absence of any explanation therefor; (7) the lack of any rational reason why Stephens, a janitor, would be so interested personally in the activities of the union organizers that he would spend practically an entire day in following one of them and in observing them; and (8) the admitted hostility of Respondents and Morris Scharff to the Union's organizational efforts.* I therefore find and conclude that by the aforedescribed conduct, Respondents engaged in surveillance of the activities of the union organizers, and thereby interfered with, restrained and coerced their employees in the exercise of their rights

*Accordingly, I do not credit Scharff's inadequate explanations for Stephens' use of his car throughout the day, for his visit to Breeze Inn and for noting the license numbers of the organizers' cars, and I do not credit his denial that he authorized Stephens to follow the organizers.

to engage in concerted activity, in violation of Section 8 (a) (1) of the Act.[9]

b. Morris Scharff's antiunion speeches

On December 3, 1957, 3 days after the Breeze Inn restaurant incident related above, Respondent Walton assembled its employees in the plant during working hours and, in the presence of his father and brother, Morris Scharff made an antiunion speech to all of Walton's employees.[10] Later that day, the same procedure was repeated at the Loganville Pants plant, where Morris repeated the antiunion speech in the presence of his brother Arthur, Loganville Pants' treasurer, and Mr. Hughley, the plant superintendent. One week later, on December 10, 1957, Morris Scharff made a second antiunion speech on company time to the employees at the Walton plant, and later that same day, made a similar speech to the Loganville Pants' employees. The testimony regarding what was said by Morris in these speeches varied in accordance with the recollections of the General Counsel's witnesses. Some remembered that Morris, in substance, said that the plant would close down if the Union came in, others remembered that Morris said that he wanted no part of the Union and would leave if the Union

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[9] Organizer Eiger testified that employees of Respondents were at the restaurant at the time Morris Scharff took down the license numbers. He was not corroborated in that testimony by the other organizers who testified concerning this incident and I do not credit his testimony in this respect. However, the fact that no employees were at the Breeze Inn to observe Scharff take down the license numbers of the organizers' cars and none observed the following of Broom's car by Stephens, is immaterial and does not detract from the violation. *E-Z Mills, Inc.*, 101 NLRB 979 980.

[10] The employees were paid for the time thus consumed.

came in, and others recalled that he said, *inter alia*, that if the employees wanted to forget that they had signed for the Union, he was willing to forget it too. This variance in their recollection is not surprising in view of the length of the speeches.[11] According to Morris Scharff, he made the four speeches from notes, simultaneously recording the speeches by dictaphone. I received in evidence (Respondents' Exh.'s 89 and 90) transcriptions of the speeches made at the Walton plant which were typed by a Walton office employee after the speeches were made.[12] From a comparison of the transcriptions with the testimony of the witnesses, I am satisfied that the transcriptions are substantially accurate reproductions of what was said, notwithstanding the absence of the tapes and the mechanical possibility that portions of what was said might have been omitted from the tapes and/or the transcriptions.[13]

In his first speech, Morris Scharff stated in substance that he had no official connection with Walton because of a contract with the Union in New York City, and that he was helping his father and brother until his union contract terminated when he would become a partner in the business. He stated that he had been fighting the Union in New York

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[11]Transcribed, the December 3 speech at Walton consists of 7½ pages of single-spaced typewritten copy, and the December 10 speech, 3 pages of similar copy.

[12]According to Morris Scharff, the speeches at the Loganville Pants plant were not transcribed and the tapes of none of the speeches could be located. However, Morris testified that his speeches to the Loganville Pants' employees were substantially the same as those he made to the Walton plant employees.

[13]Accordingly, insofar as the recollection of the General Counsel's witnesses differ from the transcriptions, I am accepting the transcriptions' version. That is not to say that I regard Morris Scharff as a truthful witness, but merely that I believe that the transcriptions are substantially accurate and more reliable than the witnesses' recollection of what was said.

and that the Union's real purpose in attempting to organize the plant was to have Walton's work transferred back to New York City for performance by New York employees, something which he (Morris Scharff) would not permit to happen.[14] The speech then continued with a harangue against the Union, including an appeal to sectional prejudices based on the northern origin of the Union and an appeal to class prejudice based on the "millions of dollars" accumulated by the Union through dues, initiation fees and assessments which "comes out of the pockets of the worker who is trying to put bread and milk on table." In concluding, Morris Scharff stated:

> . . . remember, I have no association with this Company, officially. I hope to have in the near future, but if you want a Union shop, you are going to have it without me, because I have had my stomach full of Unions, because I can't take orders from New York. I can't take an order to be unfair to one person or another. I will have no part of it.

After careful study of the two transcriptions, I am convinced that with the exception of the above quote, the statements made by Morris Scharff in his antiunion speeches are protected free speech within the meaning of Section 8 (c) of the Act. However, I do not so regard the

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[14]This statement is, of course, completely inconsistent with Morris Scharff's previously stated lack of official connection with Walton. Indeed, the speech is replete with references showing Morris' supervision of the plant and the knowledge thereof by Respondents' employees; e. g., the reference to the request made to Morris by employees for permission to wear slacks, shorts or low cut dresses during the summer; his illustration that if the employees' and his positions were reversed and the employees were "my foreman and my boss"; and his control of the terms of repayment of loans made by Respondents to employees.

statements in the portion of the speech quoted above, in which Morris Scharff threatened not to associate with Respondents if the Union came in. When viewed in context, that statement conveyed a threat to the economic security of Respondents' employees if the Union became their representative. I base this conclusion on the fact that the threat not to associate with Respondents came from the person who, as found above, was the principal official of Respondents in the operation of the plants, was closely related both by blood and in actual management with the record owners of the business, and was regarded by Respondents' employees as their boss; and on the further fact that the statement was made at a forum and to a paid employee audience supplied by Respondents. In that context, Respondents' employees could, as many of them apparently did, reasonably interpret that statement as the equivalent of a threat to shut down the plant rather than deal with the Union. *McCann Steel Co.*, 106 NLRB 41, 59[15] The Board has frequently held that a threat to shut down or remove a plant to discourage or prevent unionization violates Section 8 (a) (1) of the Act. *Drummond Implement Company*, 102 NLRB 596, 598; *Richards and Associates*, 110 NLRB 132, 138-140. Moreover, even if Scharff's statement quoted above, is not regarded as the equivalent of a threat to close the plant, but merely that he (Morris Scharff) would no longer be associated with the business if the Union came in, the statement, coming as it did from Respondents' principal operating official, constituted a threat to the economic security of Respondents' employees and violated Section 8 (a) (1) of the

[15]Some of the General Counsel's witnesses testified that Morris, in his speech, threatened to close down the plant if the Union came in. In my opinion, their testimony was the witnesses' interpretation of Morris' remarks quoted above.

Act. *McCann Steel Co., supra; Audubon Cabinet Company, Inc.*, 117 NLRB 861, 863.

c. Interrogation of employees by Morris Scharff

In furtherance of its organizational campaign, the Union held three meetings of Respondents' employees at the Rosebud Community House on December 3, and 12, 1957, and on January 9, 1958. Walton employee Grace McCart, one of the discriminatees alleged in the complaint, attended the January 9 meeting, and was discharged the following day by Plant Superintendent Prosterman. On January 14, 1958, following her discharge by Walton, Grace McCart visited Morris Scharff to inquire concerning the cause of her discharge and told Morris she believed it was because she had signed a card for the Union. Morris then asked her if she had gone to a union meeting the previous Thursday, January 9 (the night before her discharge) and McCart replied "yes." Morris then asked who was at the meeting, but McCart refused to tell. Instead, she told Morris she went to the meeting because she had been asked to do so by a fellow employee who had stopped by McCart's house before the meeting Scharff asked for the name of the girl, but McCart would not divulge it. He asked her if it was the girl who sews in the tape or if it was Anne Clark, but McCart said, "no." Scharff then stated that he knew everyone who attended the meeting, anyway, and that the most active proponents of the Union were Ruth Brooks, Pearl Coker and Jeanette Beaver. Morris Scharff admitted that he had inquired of Grace McCart whether she had attended the union meeting and that he had also inquired whether Jeanette Beaver, Pearl Coker and Ruth Brooks had attended. Scharff testi-

fied that his reason for inquiring whether Grace McCart had attended the union meeting was to "reassure" her that she was not being discharged because of the Union, and that his reason for inquiring about the others was that it was common knowledge about the town that these girls "were very heavily pro-union, and active in the organization attempt."

I do not credit Morris' explanations for his interrogation of Grace McCart. It is, in my opinion, beyond comprehension how such an inquiry could reassure Grace McCart that she had not been discriminatorily discharged because of her attendance at the union meeting. Indeed, the admitted inquiry tends to confirm McCart's belief that her discharge was motivated by her attendance at the union meeting. Moreover, on the entire record, I do not regard Morris Scharff as a truthful or reliable witness.[16] I therefore conclude:

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[16]My lack of regard for the veracity of Morris Scharff as a witness is based on, *inter alia*: (1) his testimony that on the date of the discharge of Pearl Coker (January 15, 1958), he did not know whether or not she belonged to the Union, when in fact, only the day before he had interrogated Grace McCart regarding Coker's attendance at the January 9 meeting, and in connection therewith, admitted it was common knowledge that Coker was 1 of 3 employees who were "heavily pro-union"; (2) his implausible testimony regarding the use of his car for surveillance of union organizers and for taking down the license numbers of their cars; (3) his testimony, which I do not credit, that he had no official connection with Respondents until June 1957, when in fact he moved to Atlanta from New York in April 1957; (4) his speech to employees that he had no official connection with Respondents whereas the record shows that he was their principal operating official; (5) his implausible testimony that operators who never worked on high speed sewing machines are more easily trained than persons who have operated such machines; and (6) his testimony, which I cannot believe, that Respondents' employees asked him after his antiunion speech whether he was for or against the Union.

(1) By stating that he knew who had attended the meeting, Scharff gave Grace McCart the impression that Respondents had engaged in surveillance of the meeting. As the Board said in *F. W. Woolworth Co.*, 101 NLRB 1457, footnote 2, "as such a statement creates the impression that the Employer had engaged in surveillance, it violates Section 8 (a) (1) whether or not he did so."

(2) In the context of Respondents' admitted hostility to the Union and Morris Scharff's antiunion speeches, by Scharff's interrogation of Grace McCart regarding her attendance at the union meeting and the identity of the employee who had solicited her attendance and of others who attended, Respondents engaged in restraint and coercion of employees in the exercise of their rights under the Act. *Blue Flash Express, Inc.*, 109 NLRB 591, 593.[17]

In view of my finding that by the aforementioned interrogation and statements of Morris Scharff, Respondents engaged in unfair labor practices in violation of Section 8 (a) (1) of the Act, I deem it unnecessary to consider or pass upon the additional incidents of interrogation allegedly engaged in by Morris Scharff and by Respondents' Supervisors Gerald Carter, Myrtle Ewing, Grace Higgins and Edna Atha, since no different order would be recommended by me based on such interrogation than that based on the interrogation already found.

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[17]Although Grace McCart was a discharged employee on this occasion, she was, at the least, an applicant for reemployment at the time and, therefore, an employee within the meaning of the Act. *Phelps Dodge Corp.*, 313 U. S. 177.

d. Alleged threats by Supervisors
Grace Higgins and Myrtle Ewing

According to Walton employee Pearl Coker, on the morning of January 10, 1958, she told her supervisor, Grace Higgins, that she had attended a union meeting the night before, and in reply, Higgins told employee Coker that she had been told by the Scharffs at their supervisors' meeting that they [the Scharffs] would close their plant down before they would work union labor. Supervisor Higgins testified that she recalled that Coker told her about attending the union meeting the night before but that Higgins had made no reply. Since I do not regard Grace Higgins as a credible witness and the threat to close down the plant rather than work with union labor is consistent with the implications of Morris Scharff's speech in which he threatened that he would not associate with Respondents if the Union came in, I credit the testimony of Pearl Coker that Higgins made the statement attributed to her by Coker.[18]

Walton employee Pauline McGee testified that just after the Union held its first meeting, two of Walton's employees and McGee were discussing the Union in the plant at lunch time, when Supervisor Myrtle Ewing came by the machine

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[18] I base my conclusion that Higgins testimony is untrustworthy upon the entire record, including: (1) her demeanor as a witness; (2) her testimony that she heard Morris Scharff make a speech in the plant and yet did not know that Morris Scharff was against the Union; (3) her incredible testimony that the speech was primarily "not about the union"; (4) her testimony that she never discussed the Union with her supervisors, which was contradicted by the testimony of both Superintendent Prosterman and Morris Scharff, whom I credit in this respect; and (5) her testimony that she was out sick when Francis Elizabeth Johnson was laid off, but was present when Evelyn Hudson was laid off, both layoffs having occurred on the same day and time.

and said, "If you don't want to dig your own grave, you had better shut up talking about the Union." In addition, Walton employee Violet Ewing, a sister-in-law of Supervisor Myrtle Ewing, testified that about 2 weeks after the union organizers came to town, she had a conversation with Supervisor Myrtle Ewing during which the latter asked whether Violet knew that there were union organizers around and Violet answered that she did and then Supervisor Myrtle Ewing said: "Morris [Scharff] said he didn't care how good an operator a girl was, or who she was, that he would fire her if he found out she had joined the Union." Supervisor Ewing recalled having a conversation about "digging of graves" with employee McGee, but gave this version of it: Pauline McGee was on her way from the water fountain and the bell for resumption of work had either rung or was ringing. She then told McGee that she was digging her own grave by not cooperating and being at her machine at work time. Supervisor Ewing denied that she said anything to McGee about the Union. Referring to her conversation with her sister-in-law Violet Ewing, Supervisor Myrtle Ewing testified that she recalled asking her whether Violet knew the union organizers were around, and that when Violet replied, "yes," she said nothing further. Specifically, Supervisor Ewing denied making the statement attributed to her by Violet Ewing that Morris would fire employees, no matter how good they were, if they joined the Union. I resolve these conflicts in the testimony against Respondents because: (1) I credit the testimony of employee McGee and Violet Ewing; (2) the statements attributed to Supervisor Ewing are consistent with Respondents' antiunion attitude and as hereinafter found, with the subsequent discharge of employees

because of their union adherence; and (3) I do not regard Supervisor Myrtle Ewing as a credible witness.[19]

Accordingly, I find and conclude that by the above statements made by Supervisors Grace Higgins and Myrtle Ewing to employees Pearl Coker, Pauline McGee and Violet Ewing, Respondent Walton engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act. *Drummond Implement Co.*, 102 NLRB 596, 598; *Cleveland Trust Company*, 102 NLRB 1497, 1499.

e. Alleged interference, restraint and coercion by Loganville Pants Superintendent Hughley

The complaint alleges that on or about January 8, 1958, Superintendent Hughley promulgated a rule prohibiting Loganville Pants employees from talking about the Union in the plant, not limited to working time, and that he threatened to cease attempting to procure orders if the em-

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[19] I base my conclusion on the unreliability of the testimony of Supervisor Myrtle Ewing on various considerations, including, but not limited to: (1) the improbability of her telling Pauline McGee that she was digging her own grave and uncooperative merely because on this one occasion, Pauline McGee was not at her machine to resume work when the bell rang, although admittedly she was enroute to her machine; (2) the implausibility of Supervisor Ewing's testimony, which in fact was contradicted by both Superintendent Prosterman and Morris Scharff, that she had never received instructions not to discuss the Union with employees; (3) her likewise implausible testimony that she neither received instructions from nor consulted with Morris Scharff, whom I have already found to be the principal official of Respondents in respect to production (Myrtle Ewing's testimony was given before Respondents conceded Morris Scharff's agency and before he testified that he supervised Walton); and (4) her testimony that she began preparing for the layoff in December, when according to Superintendent Prosterman and Morris Scharff, they did not notify the supervisors about the layoff until the middle of January.

ployees persisted in talking about the Union. The testimony in support of these allegations was as follows:

Loganville Pants employee Ruth Brooks testified that following a lunch hour argument among the employees in the plant about the Union, Superintendent Hughley cut off the power to the machines and told all the employees: "I am sick and tired about hearing this talk about the Union. I am working trying to get contracts so that you girls can have work, and if this is the way you are going to do, I am through with it." Employee Lela Beaver testified that on this occasion, Hughley said that he had heard enough about the Union and did not want to hear any more about it, that he was tired of it, that he did not need the Union to tell him what to do and push him around, and that if the employees had anything to say about the Union, to say it at home or outside the plant, not in the plant. Referring to new contracts, employee Beaver testified that Hughley said he would get them if the Union would leave him alone. According to employee Nancy Williams, Superintendent Hughley said on this occasion, that he would not have any union talk in the shop, that he was trying to get more contracts but if the employees were not interested, he would not try. According to employee Williams, Hughley's remarks were prompted by the fact that the argument about the Union had continued after the bell to resume work had rung, and some of the girls were not at their machines.

At the time of the hearing, Hughley was no longer employed by Respondents and he was not called to testify. Loganville Pants Supervisor Edna Atha testified that she never heard Mr. Hughley make a speech at the plant and knew of no rule prohibiting talking about the Union on com-

pany property. Morris Scharff also testified to lack of knowledge of such a rule.

Although Respondent Loganville Pants had a right to prevent interference with production by discussion of the Union during working hours, it had no right to prohibit such discussion during nonworking time.[20] The uncontradicted evidence discloses that the prohibiting of union talk in the plant was not limited to working time. Accordingly, I find that by the announcement of such prohibition by Superintendent Hughley, Respondent Loganville Pants interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby violated Section 8 (a) (1) of the Act.

Moreover, the argument in the plant described above did not warrant Hughley's threat to cease trying to get work or contracts for the plant, and that threat clearly restrained and coerced and interfered with the employees' rights to engage in concerted activities. *B. & Z. Hosiery Products Co.*, 85 NLRB 633, 634. Accordingly, I find that by such threat, Respondent Loganville Pants engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

f. Other alleged incidents of interference, restraint and coercion

Paragraph 19 of the complaint alleges that Respondents, through Morris Scharff, their agent, conditioned employment opportunities for respective employees upon whether

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20 *Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793; *Peyton Packing Co.*, 49 NLRB 828, 843, enfd. 142 F. 2d 1009 (C. A. 5); cert. den. 323 U. S. 730.

or not the Union became the representative of their employees. The testimony adduced in respect to this allegation was that sometime during the month of January 1958, Walton employee Nellie Wood asked Morris Scharff for a job for her stepdaughter, Isabelle Gibson. Morris replied, "Let's wait and see what the Union does." This conversation was admitted by Morris Scharff during his testimony.

I do not regard this statement as sustaining the allegation of the General Counsel's complaint. If what was intended by Scharff's statement was that Isabelle Gibson would get a job if the Union did not succeed in achieving representative status, it would obviously interfere with, restrain and coerce Nellie Wood in the exercise of her right to engage in concerted activity and would violate Section 8 (a) (1) of the Act. However, the statement was ambiguous and capable of many interpretations other than the one suggested above and does not necessarily imply that the job would be given if the Union did not become the representative. I therefore conclude and find that the General Counsel has not sustained the burden of proof of this allegation and, accordingly, I will recommend dismissal of paragraph 19 of the complaint.

Paragraph 21 of the complaint alleges that Respondents induced and encouraged employees to withdraw from and renounce the Union and assisted them therein. The testimony in respect to this alleged violation of Section 8 (a) (1) of the Act was as follows:

As aforestated, a number of employees testified that in Morris Scharff's speech of December 3, 1957, he said *inter alia*, that if employees had signed union cards and wanted

to forget about it, he was willing to forget about it. This statement does not appear in the transcription of the speech of Morris Scharff made on December 3, which I have credited, and accordingly, I do not credit the recollection of the witnesses in this respect. The record further discloses that on or about December 9 or 10, 1957, a Notice to Employees was posted by Respondents on the bulletin board at the plants (Resp. Exh. 3), which in substance advised employees of the provisions of the Georgia Right-to-Work Law and that they were not required to join the Union in order to work for Respondents. In addition, on January 18, 1958, both Morris and Arthur Scharff wrote to their attorney, Alexander E. Wilson, Jr., requesting information on how to advise employees on the method of withdrawing their signatures from union cards. On February 4, 1958, Attorney Wilson replied to Morris Scharff by letter (G. C. Exh. 9), stating, "There is no procedure by which this may be done legally" and further stating that if an employee wanted to voluntarily withdraw from the Union, he could write the Union and so inform it. Upon receipt of Attorney Wilson's letter, Morris Scharff posted it on the employees' bulletin board in the plant and beneath it posted a piece of paper on which was written the name and address of the Union. Thereafter, a group of six employees got together and wrote a letter to the Union (G. C. Exh. 6), advising that they wished to withdraw their signatures from their union cards. Two of these employees, called by the General Counsel, testified that their decision to withdraw from the Union was entirely their own and that they got the address of the Union from the bulletin board in the plant.

On the foregoing record, I do not believe that the General Counsel has sustained his burden of proof that the Company

solicited employees to withdraw from the Union. More specifically, I do not regard the mere posting of Respondent's Exhibit 3 and General Counsel's Exhibit 9 and the address of the Union on the bulletin board as sufficient proof of the allegation that Respondents solicited employees to withdraw from the Union. I do not regard the cases cited in the General Counsel's brief in support of this allegation as apposite since those cases involved situations where agents of the respondents requested, assisted, and indeed suggested withdrawal. There is no such evidence in this record. Accordingly, I shall recommend the dismissal of paragraph 21 of the complaint.

D. *The alleged discriminatory discharge of employees*

a. The discharge of Lucille Yancey

Lucille Yancey was one of the first production employees hired by Respondent Walton (June 28, 1957). She had 6 years of previous experience in the garment industry. Prior to the commencement of Walton's operations, Mrs. Yancey had served on a committee which solicited employees to work for Walton. Mrs. Yancey was assigned to the job of sewing linings to the facing of coats. According to her uncontradicted testimony, Mrs. Yancey was told by her supervisor, Grace Higgins, that her work had improved, that the Company was pressing for more production, but that "they [the Company] won't have to worry about you." Mrs. Yancey further testified without contradiction that about 2 months after she started to work for Walton, she asked Arthur Scharff for a transfer to the pants plant because she had more experience on pants and could make more

money, but Arthur rejected the request, saying, "it takes brains to make coats and anybody can make pants." Mrs. Yancey testified that she was never told that her work was unsatisfactory by any of Walton's supervisory personnel.

Mrs. Yancey joined the Union on November 23, 1957, and agreed to give the Union a list of names of employees for solicitation. Between November 23 and December 4, 1957, the date of Mrs. Yancey's discharge, her home was visited frequently by the Union's organizers, both individually and in groups. On Wednesday, December 4, 1957, the day after Scharff's antiunion speech, Mrs. Yancey was discharged by Plant Superintendent Prosterman. The latter told her that he was laying her off because there was not enough work. When she protested, Prosterman asked whether she wanted to talk to Morris Scharff. That same day, Mrs. Yancey spoke to Morris Scharff in his office about her discharge. Scharff called in Dorothy Mitchell, the office supervisor, and said, "Dot, I'm having to lay off Lucille due to the fact that there's not enough work." Mrs. Yancey said that there must be some other reason for her layoff. Scharff replied that her work was bad, and Mrs. Yancey said, "Why are you telling me now about my work? Why wasn't I told before now, and why did you keep me this long?" Scharff did not reply. The following day, Mrs. Yancey again visited Morris Scharff in his office to inquire about her job and the cause of her discharge. During this visit, Scharff exhibited a union paper to her, and said, "Lucille, I'll tell you, I've been informed that you and your husband have been working with the union organizers." Scharff also asked Mrs. Yancey where her husband worked and if her husband was an of-

ficer of the union there.[21] Mrs. Yancey answered the latter question affirmatively, but added that neither she nor her husband had been helping to organize the plant. She requested reinstatement, saying that her job meant more to her than being a member of the Union and that if Scharff would restore her to her job, she would not vote for the Union. Scharff replied that he did not know whether Mrs. Yancey had signed a union card, that he could not put her back to work, but if the Union did not get in, he would reinstate her.

Morris Scharff testified that the reason for Lucille Yancey's discharge was that her work was completely unsatisfactory in quality in that she did not sew the proper facing to the proper lining. He testified that on a number of occasions, he had observed that when Mrs. Yancey received a bundle of mixed colors, she would pull out all the linings of one color in order to sew them with the same color thread instead of taking them in order and changing the thread whenever necessary. Because of this, she was unable to get the linings back in proper place and that caused her work to be mixed up. He testified that he reprimanded her about this on 4 or 5 occasions over a period of 3 to 4 months. He further testified that her production was insufficient and that she had $3 and $4 a week makeup for several consecutive weeks.[22] Scharff testified that Supervisor Grace Hig-

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[21] Ethan Yancey, the husband of Mrs. Yancey, is a paid representative of the Railway Clerks Union in Atlanta.

[22] Makeup or makeup pay, a term used frequently in the record and this report, was defined as the difference between the actual earnings of an employee (computed by multiplying her production by her piece rate) and the legal minimum of $1 an hour which the employee was paid if she did not produce sufficiently to earn the legal minimum.

gins came to him about 10 days before Mrs. Yancey's discharge and threatened to quit because Mrs. Yancey was acting up and making her life miserable, and that on another occasion, he had seen Grace Higgins crying on the job.[23]

Scharff testified that he had two conversations with Lucille Yancey after her discharge. In the first of these conversations which occurred several days after her discharge, Mrs. Yancey said that she knew she had been terminated because of her union membership. Scharff denied it. He testified that Mrs. Yancey then asked to be reinstated and offered to resign from the Union and to work for Respondents "with regard to the Union," but he rejected the offer. Scharff further testified that Mrs. Yancey said that she had worked to bring the plant to Loganville, to raise money to build the plant, to recruit employees, and to further the plant's interests, and could do so again, but he said "no." Scharff neither affirmed nor denied Mrs. Yancey's testimony that he told Dorothy Mitchell that he was laying off Mrs. Yancey for lack of work.[24] Scharff further testified that his second conversation with Mrs. Yancey in his office 3 or 4 days later, was also attended by his brother Arthur Scharff, and Mrs. Yancey's husband. Morris Scharff testified that Mrs. Yancey again told him she was fired because of her union activity. She showed him a discharge slip from a prior job. Morris began to copy the reason for the discharge from the slip, but Mr. Yancey took the slip away before Morris could really examine it. Arthur Scharff then left the office and Mrs. Yancey again asked to be put back to work but he refused. Morris Scharff denied that anything

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[23] I assume that Scharff meant because of Mrs. Yancey.

[24] Dorothy Mitchell was not called by Respondents to testify although still employed by them.

was said by him concerning unions. He testified that at the time of her discharge, he did not know that Mrs. Yancey belonged to the Union and that her union membership had nothing to do with her discharge or with the fact that she was never rehired. He denied that he told Lucille Yancey that if the Union did not get in, she could have her job back.

Superintendent Prosterman testified that Lucille Yancey was discharged because she was an "incompetent," "undesirable," "unsatisfactory" employee who "grumbled" and "complained" constantly to fellow employees. He testified that on a number of occasions, he told Lucille Yancey that the quality of her work was poor, but he was unable to recall when he did so. Prosterman also could not recall whether he told Mrs. Yancey that she was discharged or laid off or whether he told her that she was laid off for lack of work. He testified that she never made production standards, "in other words, she had makeup to a great degree." Regarding the quality of her work, Prosterman testified that Mrs. Yancey was unable to distribute the fullness in the garment properly, that on occasions she sewed the wrong linings to the wrong facings, and that, because she was unable to produce the quality of work, she was unable to make her minimum. On cross-examination, Prosterman testified that nothing unusual occurred on the day Mrs. Yancey was discharged or around that time which caused her discharge on that day rather than on any other. He further testified that Lucille Yancey was an undesirable employee ever since September 1957, when he came to work for Respondents. He testified that he received unfavorable reports about Mrs. Yancey practically daily. Prosterman denied that he knew that Mrs. Yancey was active in the Union at the

time of her discharge and that it was pure circumstance that she was discharged just after she became active in the Union.

Supervisor Grace Higgins testified that Mrs. Yancey was fired for very poor work and because she was "uncooperative" and "unruly." She explained that Mrs. Yancey did not sew her work so that it would fit properly in the garment, never put in the proper fullness, sewed darts on the wrong side, and mixed the linings, i. e., did not match the right facing with the right lining. By uncooperative, Mrs. Higgins explained that Mrs. Yancey did not want to take instructions. When she came to Mrs. Yancey to check her work and tell her how to do it, Mrs. Yancey would say "Now, listen, you will have to make it a little easier on us around here." Mrs. Higgins further explained that by uncooperative, she meant that Mrs. Yancey wanted the linings cut an inch longer so that she could sew them in as she pleased. This, according to Mrs. Higgins, happened frequently, every day and all during the time she was there. Mrs. Higgins further explained that by unruly, she meant that Mrs. Yancey would not take instructions and that she fussed at other girls and always complained about her machine. By fussing at other girls, Mrs. Higgins meant that Mrs. Yancey complained that Mrs. Higgins could not give instructions and that she was unable to do work that pleased Mrs. Higgins. This, according to Mrs. Higgins, took place just about every day all during the period from July through December. Mrs. Higgins further testified that Mrs. Yancey was discharged because she could not make production. She further testified that nearly all of Lucille Yancey's work was bad and had to be done over. Mrs. Higgins said she had to talk to Lucille Yancey about her bad work every

day. She also testified that she warned Mrs. Yancey that if she did not improve, she would be discharged. Referring to Mrs. Yancey's request that the lining be cut an inch longer so that it would be easier to put in the required fullness, Mrs. Higgins testified that the additional inch was unnecessary because they did not need that much fullness in the lining. Like Prosterman, Mrs. Higgins testified that nothing unusual happened on the day or week before Lucille Yancey was fired, that her work was the same as always. Mrs. Higgins testified that mistakes in a garment factory are rather frequent but that Mrs. Yancey's mistakes were more than normal. She denied that she ever requested Mrs. Yancey's discharge. She also denied that she ever heard Prosterman warn Lucille Yancey about discharge or layoff.

Three Walton employees were called by Respondents to testify concerning Lucille Yancey's alleged bad work.

Imogene Meeks, an employee of Walton who, together with Odelle Barnes, performed the operation after Mrs. Yancey, testified that she received coats to work on, on which Mrs. Yancey had sewn the wrong lining to the wrong facing. She further testified that Lucille Yancey sometimes sewed darts on the wrong side of the material. She testified that the number of darts sewn by Yancey on the wrong side was 1 or 2 a day and that the sewing of the wrong linings occurred about once every day and sometimes twice a day.[25] Mrs. Meeks further testified that she heard Lucille

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[25]Mrs. Meeks testified that she sewed 200 pockets a day and if she sewed facings she did about 250 a day. Since Lucille Yancey was the only employee sewing linings to facings and darts on linings, the operation immediately preceding that performed jointly by Imogene Meeks and Odelle Barnes. I infer that Lucille Yancey worked on at least 200 to 250 garments, which meant that Yancey's defects, according to this witness' testimony, would be 1 or 2 a day out of at least 200 to 250.

Yancey and Mrs. Higgins arguing about the former's defective work and she further testified that Lucille Yancey argued with her and Odelle Barnes about making more money than she. However, on cross-examination, Mrs. Meeks denied that she had any arguments with Lucille Yancey while the latter was working for Walton. Moreover, her testimony regarding arguments with Mr. Yancey was not corroborated by Odelle Barnes. The latter, who sat nearer to Mrs. Yancey's machine than Mrs. Meeks, also denied that she ever heard Grace Higgins talk to Mrs. Yancey about her work.[26]

Odelle Barnes, an employee of Walton who performs the same operation as Imogene Meeks, testified that sometimes Mrs. Yancey sewed the wrong lining to the wrong facing, and sometimes she found darts that had been sewn by Lucille Yancey on the wrong side. Mrs. Barnes was unable to tell how many times Lucille Yancey got the linings mixed up or the darts sewn on the wrong side. Mrs. Barnes, who is now also doing the work which Lucille Yancey previously performed, admitted that she occasionally sews the wrong facing to the wrong lining. When asked on cross-examination whether or not she made more errors of this type than Yancey or visa versa, her response was, "everybody makes mistakes." She testified that she did not know whether she made as many mistakes as Yancey did, or whether Frances Elizabeth Johnson, who replaced Yancey when the latter was fired, made as many mistakes as Yancey. On redirect examination, Mrs. Barnes testified that Lucille Yancey had more work to repair than she, but explained that since she

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[26]Accordingly, I do not credit Mrs. Meeks' testimony either in respect to the alleged arguments between Supervisor Higgins and Mrs. Yancey, or in respect to arguments between the latter and Odelle Barnes and Mrs. Meeks.

(Barnes) also performed the operation which followed she was able to detect and correct her own errors before her work passed along to other operators.

Ruby Berry, an employee of Walton, who between July and October 1957, worked at the job of side seaming and sewing in side pockets, an operation which followed that of Lucille Yancey, testified that during the period she worked on that operation, she had come across coats on which the wrong facing had been sewn to the wrong lining, or the darts were sewn on the wrong side of the lining. On these occasions she took the coats back to Supervisor Grace Higgins. Mrs. Berry was unable to state specifically how many defective garments she returned. She said she came across them pretty often, but by pretty often she meant every day or so. Mrs. Berry further testified that she did not count the number of defective garments she found, that sometimes there were a good many and sometimes just a few. When asked whether or not there were as many as five in a single day, she was unable to state.

Mrs. Yancey denied that Supervisor Grace Higgins had ever told her that the quality of her work was poor and denied that Higgins had ever instructed her on how to do her work or corrected her on the way she was working. Mrs. Yancey admitted that she had suggested to Mrs. Higgins that the linings should be cut a little longer, not because she was having trouble with the linings, but because if cut an inch longer, it would be simpler to put in fullness all the way. Mrs. Yancey denied that she ever had any arguments with Mrs. Higgins or any other supervisor and she testified that all their discussions were on a friendly basis. Mrs. Yancey further testified that she had no discussions other

than routine with the other employees. Specifically, she denied having any arguments with any of the employees.

The determination of whether Lucille Yancey was discharged because of her activity on behalf of the Union, or whether, as contended by Respondents, she was discharged because she was an undesirable employee, presents primarily a question of credibility. My analysis of the reasons assigned by Respondents for her discharge do not persuade me of their validity.

The alleged failure of Lucille Yancey to make production is belied by her payroll record (G. C. Exh. 29) which showed her makeup pay was not a regular occurrence, contrary to Prosterman's testimony that she "never" made production. Moreover, the payroll record shows that in the 8 weeks preceding the week of her discharge, Lucille Yancey did not have a single full week's work.[27] In view of the absence of any testimony regarding absenteeism on Yancey's part, and from her testimony that she made production when she had enough work, I am persuaded that to the extent she had makeup pay, it was attributable to insufficient work to keep her occupied full time. Accordingly, I do not believe Respondents' assertion that failure to make production was one of the reasons she was discharged.

Moreover, I do not place any credence in Respondent's testimony regarding Lucille Yancey's alleged uncooperative and unruly behavior. Supervisor Higgins' explanation of what she meant by uncooperative and unruly behavior

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[27] In 4 of these weeks, Lucille Yancey only worked 2 full days or less, in 3 weeks, she worked 3 full days or less, and in only 1 week did she work as much as 4 days.

boiled down primarily to the fact that Mrs. Yancey requested that Respondents "make it a little easier" for her to properly perform her job of putting in "fullness," by cutting the lining an inch longer. Whether or not the extra inch was necessary, I cannot perceive how the request therefore demonstrated either lack of cooperation or unruliness. Additionally, Mrs. Higgins described as uncooperative and unruly conduct by Mrs. Yancey, that she always complained about her machine and "fussed" at other girls. As to the machine, the complaints, if made were apparently well founded, since Mrs. Yancey's successor on this job, Frances Elizabeth Johnson, was unable to work on it, and it was promptly exchanged for another. As to the "fussing" at other girls, Mrs. Higgins' testimony was not corroborated by any of the employee witnesses called by Respondents and I do not credit Mrs. Higgins in this respect.[28] Based on the credited testimony of Odelle Barnes and Lucille Yancey, I also do not credit Higgins' testimony that she instructed Yancey on how to do her work properly and that Yancey resented and refused to take such instructions. Since I do not believe Respondents' testimony that Lucille Yancey was "uncooperative" or "unruly," I also do not believe that that was one of the reasons for her discharge.

Finally, Respondent Walton asserts that Yancey was discharged because of the poor quality of her work. According to the testimony of Morris Scharff and Prosterman, Yancey's work was so bad that she was frequently reprimanded therefor throughout her employment by Walton. According to Grace Higgins she had to talk to Yancey about

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[28]See pages 89-90 and footnote 26 for my reasons for not crediting the testimony of employee Meeks regarding alleged arguments with Mrs. Yancey.

her bad work every day. Yet, none of the nonsupervisory employees who testified for Respondent Walton and who worked near Lucille Yancey's machine ever heard either Prosterman or Scharff reprimand her.[29] Lucille Yancey testified that she had never been told prior to her discharge that her work was unsatisfactory, and that even when she was advised of her discharge, she was first told that it was a layoff because of lack of work. There was nothing either in the testimony of Mrs. Yancey or in her demeanor while testifying which causes me to believe that she was other than a credible witness and I credit her testimony in this regard. Conversely, I disbelieve the testimony of Supervisor Higgins and Morris Scharff that Mrs. Yancey was frequently, if not daily, reprimanded about her work. These witnesses have been discredited by me in connection with other allegations of the complaint and I do not believe them in this respect. As to the witness, Plant Superintendent Prosterman, I likewise do not credit his testimony that he reprimanded Mrs. Yancey for bad work, nor his uncorroborated testimony that she grumbled and complained constantly to fellow employees.[30] The sum of the testimony of Meeks, Barnes and Berry which I credit in respect to the

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[29] Employee Imogene Meeks who testified to the alleged arguments between Mrs. Higgins and Yancey has already been discredited by me in this respect. See footnote 26, *supra*.

[30] I found Prosterman's testimony with respect to Morris Scharff's alleged lack of official connection with the Company to be wholly untrustworthy. He testified that Morris Scharff was merely a consultant and not his boss. Prosterman testified that his boss was Arthur Scharff. I have already found that Morris Scharff was the principal operating official of Respondents, and Morris Scharff admitted that he supervised the Walton plant. If corroboration of my conclusion that Morris Scharff was and is Prosterman's boss were required, it is shown by the fact that Prosterman sent Mrs. Yancey to Morris rather than Arthur to discuss the reasons for her discharge. Moreover, as aforestated Prosterman's testimony that Mrs. Yancey never made production was shown to be false by her payroll record.

quality of Mrs. Yancey's work, is that occasionally, once or twice a day out of approximately 250 garments, she mismatched the proper facing and lining and sewed the darts on the wrong side of the lining. Contrary to the testimony of Supervisor Higgins, I am not persuaded that Yancey's errors of this type were more than those of other employees who have performed this operation. Supervisor Higgins admitted that mistakes are frequent in a garment plant. Respondent's witness employee Odelle Barnes admitted that she also makes the same type of errors as those attributed to Mrs. Yancey. Indeed, she testified that "everybody makes mistakes." The only testimony regarding Yancey's alleged failure to distribute fullness properly was that of Prosterman and Higgins[31] whom I generally discredit, and, moreover, even if it occurred which I doubt, I am not persuaded that it was due to any lack of ability on the part of Mrs. Yancey but rather to the skimpy cut of the lining which she admittedly and frequently called to the attention of her supervisor. Moreover, if Yancey's work quality was so bad that it required daily admonitions from Higgins, and frequent reprimands from Scharff and Prosterman, Respondent Walton would have fired her long since, instead of retaining her in their employ for over 5 months.[32] Accordingly, I do not believe Respondents' testimony that Mrs. Yancey was discharged because of her incompetency.

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[31]Mrs. Higgins testified that Yancey never distributed the fullness properly.

[32]Moreover, it is beyond my comprehension that if, as testified by Morris Scharff, Supervisor Grace Higgins had threatened to quit and was "crying" because of her inability to get along with Mrs. Yancey, he would not have done so forthwith instead of 10 days thereafter, especially since Yancey was allegedly such a poor employee.

In a letter to his counsel (Charging Party's Exh. 2), Morris Scharff also gave as a reason for Yancey's discharge, the fact that another employee "who had seniority" was available to take over her job. Yancey's operation was taken over by Frances Elizabeth Johnson. An examination of her payroll record discloses that she had less seniority than Yancey. Thus, this alleged reason for her termination is likewise without substance.

For all the foregoing reasons, and for the further reason that Mrs. Yancey was discharged in the middle of a workweek although nothing unusual had occurred that day or that week in respect to Mrs. Yancey's work, I discredit and reject the reasons asserted by Respondents for her discharge on December 4, 1957.

Although, I have discredited the reasons asserted by Respondents for Mrs. Yancey's discharge, there remains for disposition the question of whether the General Counsel has sustained his burden of proving that her discharge was discriminatorily motivated.

I have already found that the Union started its organizing campaign in the middle of November 1957, and that shortly after the Union started its organizing campaign, Respondents in an effort to counteract the Union's organizing efforts, engaged in acts of interference, restraint and coercion of employees in violation of Section 8 (a) (1) of the Act. Thus, as I have already found that on November 30, just 4 days before the discharge of Mrs. Yancey, agents of Respondent, including Morris Scharff and J. B. Stevens had engaged in surveillance of the union organizers. Moreover, on the day before Mrs. Yancey's discharge, Morris Scharff had made

an antiunion speech in the plant, including therein a statement which I have found to be the equivalent of a threat to close the plant if the Union came in, or at least a threat to the economic security of Respondents' employees. Yancey's discharge the next day, came shortly after she had signed with the Union and after the union organizers had paid frequent visits to her home. Thus, notwithstanding Morris Scharff's denial of knowledge regarding her union status at the time of her discharge, on the basis of Respondents' surveillance of the activities of the union organizers on November 30, 1957, there is sufficient evidence for me to infer that Mrs. Yancey was known or believed by Respondent Walton to be an active union adherent. However, I do not rely on this inference alone. I credit Mrs. Yancey's testimony that in her conversation with Morris, the latter questioned her regarding her husband's status as a paid official of the Railway Clerks' Union and told Yancey that he had been informed that she and her husband were assisting the union organizers and that she would be rehired if the Union did not get in.[33] Yancey's discharge for her union adherence is

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[33]Morris Scharff's version of these conversations is not credited by me except to the extent consistent with Mrs. Yancey. Aside from my general disbelief in his veracity, as heretofore noted, and my belief in Mrs. Yancey's credibility, I have the following reasons for not crediting Morris Scharff's version of these conversations. Dorothy Mitchell was not called by Respondent as a witness although apparently available to them, to confirm or deny Mrs. Yancey's version of the conversation. Arthur Scharff, although called as a witness, did not testify regarding his participation in the second conversation with Mrs. Yancey, although allegedly he was present. Morris Scharff's testimony obviously confused his conversation with Mrs. Yancey after her discharge, with one he had with employee Ruth Brooks after her discharge, during which Brooks' husband was present and Brooks' discharge slip from a prior job (Resp.'s Exh. 1) was exhibited to Morris and then taken back by Brooks' husband before Morris could copy it.

consistent with the threat repeated by Supervisor Ewing to employee Myrtle Ewing, that regardless of competence, Morris Scharff would fire any employee if he found out she joined the Union. Accordingly, on the record before me, I am satisfied that Mrs. Yancey was discharged on December 4, 1957, because of her activity on behalf of the Union. By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Lucille Yancey thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act.

b. The discharge of Grace McCart

Grace McCart was hired by Respondent Walton on June 27, 1957. Prior to her employment by the Company she had worked in the garment industry for about 5 or 6 years. When she first started to work for Walton, she had no regular operation but later was assigned to the regular job of felling undercollars, that is, sewing the undercollar to the coat. In the performance of that job, Mrs. McCart used a Lewis blind stitching machine, a machine that sews together two layers of material without going completely through the bottom layer. It was not disputed that this is a more difficult machine to operate than the ordinary sewing machine. Mrs. McCart testified without contradiction that her machine did not operate satisfactorily and frequently skipped stitches, thereby improperly fastening the undercollar to the coat. She reported this difficulty to her supervisor, Myrtle Ewing, on many occasions. Although the plant mechanic fixed the machine, it did not stay in repair very long before it malfunctioned again. Occasionally, this happened several times during the same day. McCart com-

plained about the machine every day for about the first 3 months she worked on it.

On January 9, 1958, Mrs. McCart attended a union meeting at the Rosebud Community House. The next day, January 10, 1958, she was discharged by Plant Superintendent Prosterman.[34] Prosterman came to McCart's machine and told her that she was being discharged because of too much bad work and because a lot of collars had been sewn with the wrong color thread. McCart replied that she had been using the same color thread since she had been on that machine. She asked Prosterman if he was sure that that was the reason for her discharge. Prosterman said yes. Mrs. McCart credibly testified that before that day, neither Myrtle Ewing, Prosterman nor any other supervisor, had told her that her work was bad.

On January 14, 1958, following her discharge, Mrs. McCart, visited Morris Scharff in his office, to discuss her termination. As hereinbefore related in connection with the section of this report entitled "Interrogation of Employees

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[34]McCart's testimony that she was discharged by Prosterman was corroborated by another employee Rose L. Tribele, who sat close enough to McCart's machine to reach out and touch her. Both Plant Superintendent Prosterman and Supervisor Myrtle Ewing testified that it was the latter who discharged McCart. I credit Grace McCart's and Rose Tribele's testimony that it was Prosterman who did so. There would be no reason for Mrs. McCart or for the witness, Rose Tribele to testify that Mrs. McCart had been discharged by Prosterman rather than Supervisor Ewing since, if the discharge was illegal, Walton would be equally responsible regardless of which of them did so. There was no showing of any animus on the part of the witness, Rose Tribele or that she had any interest in the proceeding which would cause her to testify falsely. On the other hand, I have already, in connection with other aspects of this case, had reason to disbelieve testimony given by both Prosterman and Supervisor Ewing. Accordingly, I do not credit their testimony that Ewing discharged McCart.

by Morris Scharff" (pp. 73-74). Grace McCart told Scharff that she believed that she had been discharged because she had signed a card for the Union, and Scharff, in reply, inquired, whether she had attended the union meeting on January 9, asked who was at the meeting, who had accompanied McCart to the meeting, and whether Ruth Brooks, Pearl Coker and Jeanette Beaver had attended. When McCart refused to divulge the names, Morris Scharff said that he knew everyone who attended the union meeting, anyway, and that Brooks, Coker and Beaver "were heavily prounion and active in the organization attempt."[35] Scharff finally told her that they might have work for her later on.

Plant Superintendent Prosterman testified that Grace McCart was fired because of her continuous history of poor work, much of which needed repair. He allegedly therefore decided that rather than accept more work of the same type, he would dispense with her services and try someone else on her job. Supervisor Myrtle Ewing and Morris Scharff also testified to substantially the same reasons for Grace McCart's discharge. I do not believe the testimony of Prosterman, Ewing or Scharff, regarding their reasons for McCart's discharge for the following reasons:

1. At the time of McCart's discharge, Respondents were preparing for a layoff of employees because of a cut back in their production requirements. According to Prosterman's testimony, in December 1957, in preparation for the layoff, he had consulted with Walton's supervisors regarding the

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[35]As aforestated, Scharff substantially admitted this interrogation of Grace McCart and I have not credited his explanation that he was attempting to reassure McCart that her union membership and attendance at a union meeting were not the reasons for her discharge.

work quality of Walton's employees with a view of laying off those whose work was of poorer quality. Prosterman allegedly prepared a report in December 1957, of those whose termination was thus contemplated (G. C. Exh. 19). Yet, notwithstanding McCart's alleged continuous history of poor work, her name was not among those who were to be laid off. Prosterman's attempted explanation for this, that her machine was a difficult one to operate and he had no replacement for her, is likewise not believable. Walton employee Mary Alice McWalters, who was put on McCart's operation after the latter's discharge, had been working in the Walton plant since the middle of December 1957, and prior thereto, had worked on the same type of machine in Respondent's pants plant before being transferred to the coat plant. Thus, a replacement for McCart was available, contrary to Prosterman's testimony.

2. Scharff's testimony regarding the reasons for McCart's discharge are different from those he supplied to his counsel (Charging Party's Exh. 2). In that letter, he wrote:

> "Grace McCart — she had never made her piece-rate and her quality was declining and she was being held to a certain price . . ."

In addition to the fact that "declining" quality is inconsistent with Prosterman's testimony regarding McCart's "continuous" history of poor quality, the payroll record of Grace McCart (G. C. Exh. 35-A and B) shows that Grace McCart consistently made her production every week commencing with the week ending October 11, 1958.

3. Finally, the testimony regarding McCart's continuous poor work cannot be accepted by me, in view of the fact that Respondents rehired McCart on March 3, 1958, just 6 weeks after her discharge, for the very same job she had allegedly performed so badly as to require her discharge. Moreover, McCart testified without contradiction that since her reemployment, she has been using the same color of thread she always used before.[36]

Under all the circumstances herein, including Respondents' admitted hostility to the Union, Morris Scharff's professed knowledge of all who attended the union meeting of January 9, 1958, his interrogation of McCart regarding her attendance and the attendance of others at that meeting, McCart's discharge on the day following the meeting, and my disbelief of the reasons assigned by Respondent Walton for her discharge, and its consistency with the threat repeated by Supervisor Ewing that Morris Scharff would fire any employee who joined the Union, I find and conclude that Respondent Walton had knowledge of McCart's attendance at the union meeting at the time of her discharge and discharged her because of that fact. By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Grace McCart, thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act.

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[36]Two Walton employees, inspectors, testified that they found places where the thread had skipped on the collars of coats sewn by Grace McCart. Their testimony regarding the quantity of such defective work was extremely vague, notwithstanding considerable effort by the examiners to elicit more specific information. Moreover, the discovery of such defects is consistent with the uncontradicted testimony of Grace McCart regarding the malfunctioning of her machine and thus, does not establish alleged poor quality.

c. The discharge of Pearl Coker

Pearl Coker was hired by Respondent Walton on July 26, 1957. She was put on the operation known as setting collars on the coats — that is sewing the collar to the coat. She was discharged by Walton on Wednesday, January 15, 1958, the day after Morris Scharff interrogated Grace McCart about Coker's attendance at the union meeting of January 9 and admittedly told McCart that Coker was one of the leading proponents of the Union.

Coker testified that at the time of her discharge, Morris Scharff told her that her work was satisfactory and very nice but that she was not doing enough work or earning enough money and he would not have anyone on that job who could not earn $55 or $60 a week. Mrs. Coker asked to be placed on another operation, but this was refused. According to Coker's credited testimony, she was never told prior to her discharge that she was not doing enough work. The separation notice received by Pearl Coker from Walton (G. C. Exh. 8) discloses that she was discharged on January 15, 1958, because she "could not produce quantity of work required on her operation." On October 7, 1958, just prior to the hearing in this proceeding, Pearl Coker was reemployed by Walton and assigned to the identical operation which she had performed prior to her discharge on January 15, 1958.

Pearl Coker's supervisor, Grace Higgins, testified that Pearl Coker was not only a slow operator, but also that her work was unsatisfactory. She stated that Coker did not set the collar properly, did not get the fullness in the right places and that because of these errors, Coker's work had

to be redone. Higgins further testified that about once a week she spoke to Coker about the poor quality of her work as well as about her continuous makeup pay. Higgins also testified that prior to Mrs. Coker's discharge, she and Prosterman had discussed the fact that there were too many girls in the section and decided to lay off Pearl Coker, who was the slowest in production. In making this selection, Mrs. Higgins stated that she compared Coker's work with that of Mary Lou Partain and they concluded that since Partain did superior work to Pearl Coker and was capable of performing additional operations which Pearl Coker was unable to perform, Coker would be the one to be discharged. According to the testimony of both Plant Superintendent Prosterman and Morris Scharff, the reason for discharging Pearl Coker on January 15, 1958, and not subsequently on January 31, 1958, although Respondents were planning to lay off employees on the later date, was that a former employee, Louise Sammons, a much better and faster operator than Pearl Coker, was available and had indicated a desire to return to Walton.

Supervisor Higgins' testimony in respect to the unsatisfactory quality of Pearl Coker's work was contradicted by both Plant Superintendent Prosterman and Morris Scharff, both of whom testified on the subject of Pearl Coker's discharge. According to Prosterman, Pearl Coker's quality had improved approximately 2 months before her discharge and, according to Morris Scharff, "Pearl Coker's work was fair." None of Respondent's witnesses contradicted Pearl Coker's testimony that at the time of her discharge, she was told that the quality of her work was "satisfactory" and "nice." Moreover, the separation notice issued by Walton to Coker did not assign poor quality as

the reason for her discharge. Accordingly, I do not credit the testimony of Grace Higgins in respect to the alleged poor quality of Pearl Coker's work.[37]

I likewise do not credit Respondents' testimony that Pearl Coker was discharged because she did not produce a sufficient quantity of work. According to the credited testimony of Hester Lou McCart, at the time of Pearl Coker's employment by Walton, there were three operators regularly assigned to setting the collars to the coats, Pearl Coker, Mary Lou Partain and Hester Lou McCart. Hester Lou McCart testified that Mary Lou Partain was as slow an operator as Pearl Coker. In connection with the contemplated layoff of employees, Plant Superintendent Prosterman had prepared notes comparing employees in the plant and selecting employees for layoff purposes (G. C. Exh. 19). Allegedly these notes were prepared in December 1957. Significantly, these notes did not list Pearl Coker as one of those to be laid off in the reduction in force. On the other hand, Mary Lou Partain was so designated with the notation "slowest operator in [the collar] section. "*Must be replaced.*" [Emphasis in the exhibit.] Notwithstanding, it was Pearl Coker and not Mary Lou Partain who was discharged. Prosterman's only explanation was that he changed his mind. On the foregoing record, I am not persuaded that Pearl Coker's lack of productive capacity was the real reason for the sudden decision to discharge her in the middle of a workweek, especially in view of her subsequent rehiring by Respondent to perform the identical operation which she was allegedly incapable of

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[37] In the section of this Report entitled "Alleged threats by Supervisors Grace Higgins and Myrtle Ewing," I have set forth additional reasons for doubting her Higgins' veracity.

performing to Respondents' satisfaction theretofore.[38] Nor am I persuaded of the veracity of Respondents' explanation for their decision to discharge Pearl Coker on January 15 rather than on January 31 when other employees were terminated because of the cutback in production. As aforestated Respondents' explanation for the earlier discharge of Pearl Coker was the availability of Louise Sammons, a former and allegedly superior employee who had indicated a desire to return to work for Walton. However, the payroll record of Respondent Walton for Louise Sammons shows that the latter did not return to work for Walton until the week ending February 7, 1958, 2-1/2 weeks after Coker's discharge. Thus, the attempted explanation is, in my opinion, no explanation for Coker's precipitous discharge in the middle of a workweek, 2-1/2 weeks before her replacement was actually available, especially since no testimony was offered by Respondents to explain the hiatus period. In view of the foregoing, the real reason for Coker's sudden discharge obviously lies elsewhere.

According to her credited testimony, Pearl Coker joined the Union and attended two union meetings, the last of which was on January 9, 1958. On January 10, 1958, the Friday before her discharge, Pearl Coker told Grace Higgins that she had attended the union meeting the night before. Mrs. Higgins replied that she did not know who in the plant would want a union and further stated that at their supervisory meeting, the Scharffs had said that they would close their doors down before they would work with union labor. Morris Scharff, who was admittedly opposed to the Union, had on December 3, 1957, told Respondents' employees in

[38]No explanation for rehiring Coker was given by Respondents.

a speech, that if they wanted a union, they could have it without him. Scharff testified that at the time of Coker's discharge, he did not know that Pearl Coker was a member of the Union. This testimony directly contradicted that given by him in connection with the discharge of Grace McCart, in which he admitted that on January 14, 1958, the day before Coker's discharge, he had asked Grace McCart whether Pearl Coker had attended the union meeting of January 9 and testified that his reason for doing so was that it was common knowledge that Pearl Coker was one of the employees who were heavily prounion and active in the Union's organizational attempt. In view of this apparent Freudian slip, I am unable to credit Morris Scharff's denial of knowledge of Coker's union adherence and activity nor do I believe his assertions of the reasons for Pearl Coker's discharge.

Based on the foregoing, I am convinced and find that the reasons asserted for Pearl Coker's discharge on January 15, 1958, were a pretext and that the real reason therefor was her union adherence and support. Accordingly, I find and conclude that the discharge of Pearl Coker on Jannary 15, 1958, was motivated by Respondent's antiunion animus in an effort to thwart the Union's organizing efforts in the plant with knowledge of the fact that she was "heavily prounion and active in the organization attempt." By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Pearl Coker thereby discouraging membership in the Union in violation of Section 8 (a) (1) and (1) of the Act.

d. The discharge of Ruth Brooks

Ruth Brooks was hired by Walton Manufacturing Company on July 1, 1957, and was originally assigned to cutting the inside coat pockets. Prior to her employment by Walton, she had worked in the needle trades industry for approximately 9 years. In September 1957, Brooks was sent by Plant Superintendent Prosterman to the Loganville Pants plant to cut in hip pockets. She worked there for approximately 3 hours. When she returned to Walton's plant, Morris Scharff asked her whether she would like to work in the pants plant and told her to report there the next morning. She did not report as directed but instead called Mr. Hughley, who was then superintendent of the plants plant. Hughley told Brooks that during the time she had worked for him at Walton, he regarded her as a good operator and he wanted her to work for him at the plants plant. Accordingly, she reported for work at Loganville and was assigned to finishing first welts on hip pockets. From that time on, she finished first welts, cut in pockets, bagged pockets and finished down the welts. She also did all of the repairs on pockets, regardless of who had performed the operation requiring the repair. There were three other employees engaged in pocket making. Doris Stevens who finished first welts and bagged pockets. Bernice Watson who finished and bagged pockets, and Pauline Spratlin who cut in pockets. Ruth Brooks went from one job to the other in accordance with what work was needed on the back pockets at the particular time. When Ruth Brooks first started working at the Loganville pants plant, she was on a time rate — that is she was paid a $1 an hour — but later she was put on a production piece rate. She did not make production, primarily be-

cause of the repairs which she was continually required to make, and she testified that nobody made production among the employees working on back pockets. Brooks spoke to Superintendent Hughley concerning the fact that she had make up because of the repairs and he stated that he knew what she was doing and as long as he said nothing about the make up, she had nothing to worry about. About January 9, Brooks' supervisor, Edna Atha told her that she had spoken to Hughley about Brooks' makeup pay and that Hughley had said that she was not to worry, that he knew that work was short. Mrs. Brooks' testimony, in this respect, was not denied by Edna Atha, although the latter testified on behalf of Respondents.

On Thursday, January 16, 1958, Brooks was told by Mr. Hughley "I hate to tell you this but I am going to have to let you go. We've been checking over the records and we find that you have a good bit of make up. You've been here quite a while and due to the fact that you do have makeup, we are going to have to let you go." Ruth Brooks replied that she did not believe what Hughley told her because she had discussed her make up with him and he had stated that she had nothing to worry about. In reply, Hughley said, "Morris [Scharff] made me do it." She told Hughley that she knew that she was being discharged because of her union activity. Hughley then stated "Well you girls are paying too much attention to this guy that came down from the North giving you the piece rates on your job and we cannot afford to pay those rates that they pay us there."[39] Mrs. Brooks said, "Mr. Hughley, if this

[39]The reference to "this guy that came down from the North" was apparently a reference to either Union Organizer Milton Eiger who is from New York City or to the New York City address of the Union's International headquarters.

plant belongs to Mr. Rubel [Morris Scharff's cousin] and you operate it for him, how can Morris Scharff fire me," to which Hughley again replied, "He made me do it."

Hughley was not called to testify by Respondents and no testimony was offered to show that efforts had been made to obtain his attendance at the hearing. Morris Scharff testified, that on instructions given to Hughley around the end of November 1957, for the 30 days preceding Mrs. Brooks' discharge, Hughley had been reducing his work force from 38 to 35 operators to 22 operators all that was necessary to make the required production of pants. Scharff further testified that when Mrs. Brooks worked at the Walton plant, her job was the strictly mechanical one of cutting in breast pockets, and that the quality of her work was satisfactory but the quantity was not. Scharff further testified that the decision to discharge Mrs. Brooks was made by Mr. Hughley and that he (Morris Scharff) had not discussed that decision with Hughley before it was made. Edna Atha, Brooks' supervisor, who testified for Respondents did not give any reasons for Brooks' discharge and merely stated that she was discharged by Mr. Hughley. She also testified that after Ruth Brooks was terminated, Virginia Moon was hired to take Brooks' place. The payroll records of Loganville Pants Company confirm this fact. Mrs. Atha also corroborated the testimony of Mrs. Brooks that all four of the employees who worked on back pockets had makeup pay.

I do not credit Morris Scharff's testimony that the decision to discharge Mrs. Brooks was made by Hughley because: (1) contrary it is to Scharff's testimony that he, not Hughley, made the decisions for the pants plant; (2)

I do not regard Scharff as a reliable witness; and (3) Hughley was not called to deny Brooks' testimony that Hughley discharged her because "Morris made me do it." Moreover, Scharff's testimony, which suggests that Mrs. Brooks was discharged in connection with a reduction in force in the pants plant, is also not worthy of credence since that reason is wholly inconsistent with the immediate hiring of Virginia Moon as Brooks' replacement, 2 days after Brooks' discharge. Moreover, Respondents' Exhibit 7 shows that the number of employees in the pants plant was static during the period when, according to Scharff's testimony, Hughley was allegedly reducing the work force in the pants plant because of decreased production requirements.[40] I therefore do not believe that Ruth Brooks was discharged in connection with a reduction in force by Respondent Loganville Pants. Even if I believed that Brooks was discharged in connection with a reduction in force, no explanation was offered by Respondents as to why Brooks, rather than any of the other employees working on back pockets, was selected for discharge.[41] Furthermore, the discharge of Ruth Brooks for "insufficient quantity of work produced,"[42] is inconsistent with Ruth Brooks' undenied and credited testimony that Hughley regarded her as a satisfactory employee, notwithstanding her makeup pay. For all the foregoing reasons, and because Brooks, like

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[40]Respondents' Exhibit 7 shows that the level of employment at Loganville Pants was 29 for the week ending December 21, 1957, 30 for the next 4 week-period, and 31 for the following week ending January 25, 1958.

[41]The payroll records of Respondent Loganville Pants discloses that all four of the employees working on back pockets had makeup pay and that Pauline Spratlin and Doris Stevens had about the same amount of makeup pay as Ruth Brooks.

[42]This was the reason which appeared on the separation notice given to Ruth Brooks by Respondent Loganville Pants (G. C. Exh. 10).

Pearl Coker, was fired in the middle of a workweek, I do not credit any of the reasons assigned by Respondent Loganville Pants for Brooks' discharge.

The true motivation for Ruth Brooks' discharge must, therefore, be sought elsewhere. Ruth Brooks joined the Union around the latter part of November 1957 and attended all three of the union meetings which were held at the Rosebud Community House. She also attended three union committee meetings at the homes of employees. On January 10, 1958, Grace McCart was discharged, 1 day after her attendance at a meeting of the Union. On January 14, 1958, in a conversation between Grace McCart and Morris Scharff, the latter interrogated McCart regarding her attendance at the union meeting on January 9, and specifically inquired whether Ruth Brooks had attended. According to Scharff's own testimony, he knew that Ruth Brooks was one of the employees "most heavily prounion and actively engaged in the Union's organizing efforts." One day after the conversation between Grace McCart and Morris Scharff, Pearl Coker, about whom Morris Scharff similarly inquired and whom he also regarded as "heavily prounion," was fired, and a day after that Ruth Brooks was discharged. I find that all three of these firings were part of a pattern of antiunion conduct on the part of Respondents to resist and defeat the union organizational efforts by eliminating from their payroll their prounion employees. By such conduct Respondents discriminated in respect to hire and tenure of employment of Ruth Brooks, thereby discouraging membership in the Union, in violation of Section 8 (a) (3) and (1) of the Act.

E. *The layoff of employees by Respondents*

On January 24, 1958, Respondent Loganville Pants laid off some of its employees in the pants plant and on January 31, 1958, Respondent Walton laid off some of the employees in the coat division.[43] Respondents' employees were not advised that a layoff was impending before it occurred. Both layoffs were assertedly required because of a cutback in Respondents' production requirements. The General Counsel raises no issue regarding the necessity for the layoffs.

Prior to the layoffs, and apparently in an effort to discourage further discrimination against its adherents, on about January 18, 1958, the Union had sent a registered letter to Arthur Scharff (G. C. Exh. 5)[44] advising Respondents of the names of 12 employees who were members of the Union's "volunteer organizing committee" and stating that said employees had been "advised of their rights under the National Labor Relations Act . . . to join and assist the Union." Although as aforestated, there was no advance notice of the layoff, Morris Scharff testified that he regarded the letter as a demand for preferential treatment for the named employees. Whether the letter was intended as Respondents assert, to secure preferential treatment for the Union's proponents therein named, it did not accomplish its objective, for in the layoff which followed its receipt by Re-

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[43] The earlier date of the layoff in the pants plant was required because its machinery and equipment was being moved to the Walton coat plant.

[44] A copy of the letter was sent by the Union to the Board's Atlanta Regional office where charges, based on the earlier discriminatory discharges hereinbefore described, had already been filed.

spo..dents, all but 2 of the 12 were laid off. Of the two not terminated, one more was apparently intended for layoff but Respondents changed their mind for some reason not disclosed by the record.[45] Upon receipt of the Union's letter, Morris Scharff interrogated each of the employees in the coat plant named therein, as to whether they had authorized the use of their names.[46] As each acknowledged her authorization, Morris Scharff put a check mark on the letter alongside her name and later posted it on the employees' bulletin board. When posted there were check marks alongside of all the names except Jeanette Beaver's, besides those names was a dash mark, and except Lela Beaver's and Lucy Brooks, besides whose names there was no marks.[47] Scharff's explanation for the different mark alongside Jeanette Beaver's name was that although she affirmed that she authorized the use of her name on the letter, she denied that she had seen or signed it. I do not credit this explanation since the record does not establish that any of the others had either seen or signed the letter.[48] Regardless of the reason for the different mark alongside her name, Jeanette Beaver was the only employee named in the Union's letter who was not, at least, scheduled for termination and she was not laid off. Thus, in the layoff in the pants plant, Lela Beaver, the only pants plant employee named in the Union's letter, was terminated, and of

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[45]The only ones named in the letter who were not laid off were Jeanette Beaver and Mary Lou Partain. The latter was apparently also scheduled for layoff, but Prosterman changed his mind. See G. C. Exh. 19, and I. R. p. 105, l. 24-25.

[46]Apparently all but Lucy B. Brooks who was absent and Lela Beaver who worked in the pants were thus questioned.

[47]See footnote 46, *supra*.

[48]The specific conversations between Morris Scharff and each of the discharged employees will be reported hereinafter in connection with the separate consideration of each person laid off.

the 16 employees laid off in the coat plant whose previous complement was 105 employees, 9 of the remaining 11 named in the Union's letter were terminated.[49]

According to Walton Plant Superintendent Prosterman and Morris Scharff, Prosterman was advised in the early part of December 1957, to make preparations for a cutback in production of from 450 to 500 suits per day to 300 per day. Upon receipt of these instructions, in December 1957, Prosterman allegedly prepared a report containing the names of employees to be laid off, on a section by section basis, including his comments regarding the work of such employees (G. C's. Exh. 19). In the preparation of this report, Prosterman allegedly consulted with the floor supervisors in the plant regarding the skills of the various employees who worked for them, but he did not advise the supervisors of the purpose of his inquiry and did not notify the supervisors that there was to be a layoff until in the middle of January. Morris Scharff likewise testified that the supervisors were not informed of the layoff until the middle of January 1958. On January 31, 1958, just before quitting time, 16 Walton employees were notified that because of a cutback in production, they were being "permanently" laid off.

Since the reasons assigned by Respondents for their layoff varied with each employee, it will be necessary to separately consider the testimony regarding each employee whose layoff is alleged to have been discriminatorily motivated. However, certain general testimony in the record applies to all those laid off and will be reported and con-

[49]The completely disproportionate number of union adherents laid off will be more fully discussed hereinafter.

sidered first. Plant Superintendent Prosterman and Morris Scharff at first testified that the standards used for the selection of employees for layoff were, in order of importance, quality of the workmanship, quantity of production, versatility of the operator to perform other functions, and, where everything else was equal, seniority. Later in the course of the hearing, they testified that these standards were used interchangeably depending on the nature of the operation involved. Prosterman further testified that in making his selections for layoff, employees were compared only with other employees in the same section and not on a plantwide basis. On the other hand, Prosterman testified that in selecting employees to fill positions in the plant, he first considered whether anybody in the entire plant, regardless of section, could fill the vacancy.

a. The selection of Lela Beaver for layoff

Lela Beaver was hired by Respondent Loganville Pants around the middle of September 1957. She was assigned the operation of setting flies and turning corners. She was frequently so far ahead on her production that she was put on other operations. According to her undenied testimony, she was also told by Superintendent Hughley that he liked her work and that she could make production if there was sufficient work. Lela Beaver was the only employee at the pants plant who was a member of the Union's volunteer organizing committee and whose name was on the Union's letter to the Company (G. C. Exh. 5).

During the last week in January 1958, Superintendent Hughley told the pants plant employees that the plant's machinery and equipment were being moved to the Walton

plant and that all the operators who would be transferred would get a ticket on their machines. When the tickets were distributed, Lela Beaver did not receive one and she asked Hughley why. He told her that he did not know and suggested that she call Morris Scharff. She called Morris Scharff that same afternoon and asked him why she did not get a ticket for her machine. Morris replied that he did not know but that he would talk to her on Thursday. She asked him why she was not paid off if she was being laid off, and Scharff replied that if she wanted to quit, she could come down to the Walton plant and he would pay her. Lela Beaver replied that she did not want to quit, she wanted to work if there was a job for her.

The following Thursday or Friday, she visited Scharff's office and inquired regarding the reason for her layoff. She told Scharff that she thought it was because of her union activity. Scharff replied, *inter alia*, that if the Union came in, he would go out the backdoor. He then asked her how she ever got mixed up with the Union. She replied that she had known about the Union for about 8 or 9 years.

Lela Beaver's testimony regarding Respondents' satisfaction with her work and her ability to make production if there was sufficient work to be performed was not contradicted. Her supervisor, Edna Atha, testified that Lela Beaver was slow in learning and required 4 weeks in training. Edna Atha further testified that the reason Lela Beaver was not retained was that they required a girl who could work on two jobs, to set flies and tack belt loops, and another employee, Alice Lowe, had performed both operations. I do not credit this explanation for the reten-

tion of Alice Lowe rather than Lela Beaver, since Beaver regularly performed two operations, setting flies and turning corners, and also performed other operations when she was ahead on her production. There was no testimony that Beaver was incapable of tacking belt loops, an apparently simple operation. An examination of Alice Lowe's payroll record discloses that she was first employed by Loganville Pants during the week ending November 8, 1957, whereas Lela Beaver was employed during the week ending September 20, 1957. Thus Lela Beaver had greater seniority than Alice Lowe. The payroll records of Lela Beaver and Alice Lowe disclose that both had makeup pay during their entire period of employment with Loganville Pants. Beaver's makeup pay was apparently due to lack of sufficient work for her to do, a conclusion which flows from her uncontradicted and credited testimony to that effect. There was no similar testimony to explain Lowe's makeup pay, nor any testimony that Lowe was a faster producer than Beaver. Thus, even assuming that Lowe's makeup pay was also due to lack of sufficient work, there was no reason for selecting Beaver rather than Lowe for layoff on the basis of quantity of production. Moreover, there was no testimony that the quality of Beaver's work, which according to the latter's uncontradicted testimony, was "liked" by Plant Superintendent Hughley, was inferior to Lowe's.[50]

Morris Scharff also testified regarding Lela Beaver's selection for layoff. He testified that Lela Beaver was a good operator on one operation but took a long time to train.

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[50]There is no testimony given by Respondents regarding the quality of Lowe's work.

He further testified that after she had been trained, she did fair work. It was his opinion however that she was not capable of performing two operations and since they did not have a full time job for her, they dispensed with her services. I find Scharff's testimony unworthy of belief for a number of reason. In the first place, as aforestated, Beaver regularly performed two operations, setting flies and turning corners, and when caught up with her work, which was frequently, she was put on other operations. Secondly, Morris Scharff's alleged knowledge of Lela Beaver's work and his opinion regarding her lack of capability to perform two operations, must have been acquired, if at all, long after Lela Beaver's termination by Respondents, because on April 15, 1958, he stated in a letter to Respondents' counsel that "these operators (Lela Beaver and Ruth Brooks) were employed at the pants shop but I do not have accurate records as to why they were discharged, but looking at their pay and the makeup shown on the slips, it is safe to *assume* that they were inefficient operators who either replaced, or dispensed, due to the fact that the lack of work turned out" (Charging Party's Exhibit 2). Thus, although Scharff's testimony was based on personal knowledge of Lela Beaver's work, the letter shows that he has no basis for testifying to any knowledge of the work performed by Lela Beaver. Based on the foregoing, I do not believe that Scharff had any personal knowledge of Lela Beaver's work either at the time of her discharge or when he testified at the hearing. Since, as Scharff testified, the decisions for the pants plant were made by him and not Superintendent Hughley, and since according to the uncontradicted testimony of Beaver, Hughley did not know why she was not retained and suggested she talk to Morris Scharff, I am persuaded that the reasons

assigned by Scharff for the nonretention of Lela Beaver were advanced to conceal the true reason therefor.[51] My conclusion in this respect is also based on the fact, that on the record herein, Lela Beaver was at least equal to Alice Lowe in quality, production and versatility, and, therefore, on Respondents' own alleged standards for selection, Lela Beaver would have been retained on the basis of her greater seniority.[52]

b. The selection of Nellie R. Wood for lay off

Nellie Wood, an employee with 10 years experience in the garment industry, was hired by Respondent Walton on about July 29, 1957. She was assigned to perform two operations known as edge basting and edge taping and paid at the rate of $1 per hour. Subsequently, she was given a raise in pay to $1.10 an hour. According to her uncontradicted testimony, Morris Scharff told her on at least 4 or 5 occasions that he was pleased with her work. About 2 weeks prior to her selection for layoff, Plant Superintendent Prosterman told her that she was a good operator. Mrs. Wood was never criticized about the quality of her work.

Mrs. Wood joined the Union and attended all three of the Union's meetings at the Rosebud Community Schoolhouse. She also attended Union meetings at the homes of

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[51] Significantly, Beaver's makeup pay, referred to in the letter (C. P. Exh. 2) was not assigned by Respondents as the reason for her selection for layoff.

[52] I shall defer consideration of the motivation for the layoff of the members of the Union's committee until after my consideration of all the testimony regarding the reasons assigned for the selection of each for termination.

employees Lucy Brooks and Violet Ewing. In addition, Mrs. Wood solicited other employees to join the Union, and, on one occasion, visited the pants plant to solicit an employee to join. Nellie Wood was a member of the Union's volunteer organizing committee whose name was supplied to Respondents by the Union's letter (G. C. Exh. 5). On or about January 20, 1958, upon receipt of the Union's letter, Morris Scharff questioned Mrs. Wood. According to her credited testimony, Scharff asked her if she knew her name was in the letter and she replied "yes." Scharff then asked her whether she wanted her name to stay on the letter. Again she replied, "yes." Scharff then asked Mrs. Wood if she knew the consequences and she said "yes."

Mrs. Wood was one of the employees laid off by Respondent Walton on January 31, 1958. According to Plant Superintendent Prosterman, Nellie Wood's production was surplus because of the cutback in production, and, since Laverne Bowen and Johnnie Starrett had seniority over her, he selected Wood for termination. Prosterman admitted, on cross-examination, that Nellie Wood was a versatile operator and that there was nothing wrong with her work. He further admitted that if Mrs. Wood had been put on the job of either Bowen or Starrett, she could have done as well as either of them. He further testified that in considering the layoff of Nellie Wood, he did not take into consideration any employee other than Starrett and Bowen.

Nellie Wood regularly performed two operations, edge basting and edge taping. In addition, she occasionally performed other operations, and was sometimes sent to assist in the pants shop. On the other hand, Laverne Bowen only

performed one operation, edge basting, and Johnnie Starrett only performed edge taping. Thus Wood was clearly a more versatile operator than both Starrett and Bowen, and, as Prosterman testified, her work was satisfactory. Moreover, according to Respondents' payroll records, Nellie Wood had no makeup pay after October 11, 1957, whereas Johnnie Starrett had makeup pay every week in amounts varying from $3 to $11 per week. Thus, Wood was also superior to Starrett in productive capacity. According to the standards allegedly used by Respondent Walton for selection of employees for layoff, seniority was only used when all other standards, quality, production and versatility were equal. If, therefore, Respondent Walton had followed its own standards, Wood should have been retained over both Bowen and Starrett. Furthermore, the difference in seniority between Wood and Bowen and Starrett was negligible, only about 3 weeks.[53] In view of all these circumstances, and the failure to compare Wood with other employees whose work Mrs. Wood had performed and could perform, I do not credit Prosterman's testimony regarding the reason for Wood's selection for termination.

The record furnishes further ground for disbelieving the reasons asserted for Mrs. Wood's discharge. Myrtle Ewing, Wood's supervisor, testified not only that Wood's selection for layoff was based on the greater seniority of Bowen and Starrett, but also because the quality of their work was better than Wood's. Thus in respect to the quality of Wood's work, Ewing's testimony contradicts Prosterman. I do not credit her testimony in this respect.

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[53] According to Respondents' payroll records Bowen commenced working for Walton on July 10, 1957, and Wood on July 29, 1957.

Morris Scharff testified that Mrs. Wood was a good steady worker and her quality was fair but a little bit "sloppy" although not enough to lay her off for that reason. Her layoff was purely a question of lack of work. Scharff admitted that he had given Nellie Wood a raise of 10 cents an hour. In Scharff's letter to Respondents' attorneys (Charging Party's Exh. 2), he wrote in respect to Nellie Wood, "With regard to this operator, this was purely a question that a cutback had to be made in this department, due to the lack of production and the quality of her work was not equal to the standards of quality demanded on the particular job and given by the rest of the operators." Thus, Scharff's letter bases Wood's layoff on lack of quality and thereby contradicts his testimony that her work was not so bad as to require her layoff for that reason. Moreover, Scharff's testimony contradicts Prosterman's testimony regarding the satisfactory quality of Wood's work, and Wood's uncontradicted and credited testimony that Scharff had on 4 or 5 occasions told Wood that he was pleased with her work. Furthermore Scharff's testimony is inconsistent with the raise which he admittedly gave Wood. Accordingly, I do not credit Scharff's testimony regarding his reasons for the selection of Nellie Wood for termination.

In view of the shifting and contradictory reasons asserted by Respondent Walton for Wood's termination, further consideration of the record is required to ascertain the real motivation therefor. Although she was apparently one of the most active members of the Union's volunteer organizing committee and had solicited membership in the Union by Respondent's employees, Nellie Wood visited Supervisor Myrtle Ewing's home after her termination, and

asked whether she could be reinstated if she withdrew from the Union. Ewing falsely promised[54] to speak to Morris Scharff and that she would be notified by mail. Around the middle of June 1958, Nellie Wood went to the Walton plant seeking reemployment. Mrs. Wood asked for a job and told Morris Scharff that she was sorry she had signed a card for the Union and had asked to resign from the Union. Scharff told her that she had a "complaint" against Walton and suggested that she wait and talk to Mr. Joy, the General Counsel's representative who was at the Walton plant that day. In Scharff's presence, Wood told Mr. Joy that she did not want her charge to be further processed.[55] The following Saturday, June 21, Mrs. Wood again went to see Morris Scharff and was told to report to work on the following Monday, June 23. She was hired to work for the coat shop, but since there was not enough work for her in that shop, she was soon transferred to the pants shop, doing the same type of work she had previously done there. Supervisor Myrtle Ewing testified she did not know why Wood was rehired for the coat shop when there was not enough work for her there.

Mrs. Wood testified that she was sorry she had authorized the use of her name in the Union's letter to Scharff (G.C. Exh. 5), because the Union had told her she could not be fired.[56] Mrs. Wood further testified she was sorry she signed the union card because she "was afraid" "she

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[54]Ewing admitted she had no intention of requesting Wood's reinstatement for reasons which I do not credit. Significantly, Ewing did not advise Wood that her withdrawal from the Union was necessary to secure reinstatement.

[55]There is no charge by Mrs. Wood. The charges herein were all filed by the Union.

[56]Presumably for her union activity.

might have to work for Morris again some day." Wood further testified "I was sorry from the start [that she joined the Union]. I didn't want to hurt my employer. I like him. And I am still not hurt with him for nothing he done."[57] Respondents did not explain why Mrs. Wood was rehired for the coat shop when there was not enough work for her there, but denied that it was because she renounced the Union and "her charge."

On the record herein, I do not credit the shifting and contradictory reasons asserted by Respondent Walton for Mrs. Wood's selection for termination on January 31, 1958, and I find and conclude, notwithstanding Respondent Walton's denial, that Wood was rehired on June 21, 1958, because she renounced the Union and requested the withdrawal of "her charge" against Walton.

c. The selection of Evelyn Hudson for layoff

Evelyn Hudson, an employee with 8 or 9 years of experience in the needle trades industry, was employed by Respondent Walton on June 25, 1957. After trying out on various operations, she was assigned to the operation known as tacking and turning of sleeves. She worked on this operation from the time she was put on it until her

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[57]It was quite evident to me that Mrs. Wood believed that she could not remain an employee of Walton and a Union supporter at the same time and that she was most reluctant to testify against Respondents. The tears that flowed from her eyes as she testified, in my opinion, were induced by fear that Respondents would again regard her as prounion and take reprisal against her for testifying. Since she was one of the most active of the Union's workers, I do not credit her testimony quoted above, that she was sorry from the start that she joined the Union, because it was obviously inspired by fear of reprisal.

layoff on January 31, 1958. During the period of her employment, she continuously made production — that is she made more than the minimum rate and she had no makeup pay. In addition to her own operation, Evelyn Hudson was at times assigned to various operations in the sleeve section, including the jobs of sewing wigan and sewing the sleeves. She was able to perform all of the operations in the section with the exception of making sleeves. According to Hudson's uncontradicted testimony, her work in this section was satisfactory both as to quality and quantity of production.

Evelyn Hudson joined the Union around Thanksgiving Day of 1957 and attended all of the Union meetings at the Rosebud Community House. She was one of the members of the Union's volunteer organizing committee whose name appeared on the Union's letter to Respondent (G. C. Exh. 5) and she was questioned by Morris Scharff with respect to her name on the letter. According to her credited testimony, Scharff asked her "Do you realize, Evelyn, that this could work a hardship on you." Hudson replied, "yes." Scharff then asked Hudson whether she still wanted to leave her name on the letter. Again, Hudson replied, "yes."

Grace Higgins, Hudson's supervisor, testified that upon Hudson's termination, her work was taken over by two other girls, Grace Barnes and Bonnie Thompson. Higgins also testified that Evelyn Hudson frequently had makeup pay, but that statement is belied by Walton's payroll records, which show that Evelyn Hudson had no makeup pay after the week ending August 23, 1957, and in fact, only had makeup pay for 2 weeks during her entire employment

with Walton prior to her layoff.[58] Mrs. Higgins further testified that prior to her layoff, Hudson had performed more than one operation, whereas Grace Barnes and Bonnie Thompson performed only one operation.

Superintendent Prosterman testified that the reason Evelyn Hudson was laid off was that her operation was the most mechanically one in the section and could be most easily absorbed by the remaining operators in the section. Accordingly, he testified, that in order to keep retraining costs to a minimum, he decided to lay off Hudson and her work was divided between Grace Barnes and Bonnie Thompson. The implication of this testimony, that it would be necessary to train Evelyn Hudson in the operations performed by Grace Barnes and Bonnie Thompson, overlooks the fact that Hudson had and could perform the operations of both. Accordingly, I do not credit it. On the other hand, since Grace Barnes and Bonnie Thompson performed only one operation each, the decision to retain them rather than Hudson, notwithstanding the latter's greater versatility, is contrary to the standards allegedly applied by Respondent Walton in selecting employees for retention.[59] In view of the foregoing, I do not credit the reasons assigned by Respondent Walton for Hudson's selection for layoff.

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[58] Accordingly, I do not credit Higgins' testimony which implies that Evelyn Hudson was laid off because of insufficient production.

[59] According to Supervisor Higgins, the allegedly greater versatility of Mary Lou Partain was the reason for Pearl Coker's selection for discharge. Moreover, notwithstanding that Hudson was one of the oldest in the plant in respect to seniority, seniority was not considered in selecting Hudson for layoff. However, in the layoff of Nellie Wood, hereinabove discussed, Respondent Walton allegedly selected her for layoff on the basis of seniority, although the difference in length of service was negligible.

d. The selection of Violet Ewing for layoff

Violet Ewing, one of the first employees employed by Respondent Walton, started to work on June 28, 1957. Prior to that, she had worked for approximately 2 years in the needle trades industry. When first employed by Walton, she had no regular assigned operation and was put to work at various jobs, including making pocket welts, trimming collars, marking collars, basting collars, cutting pockets and sewing pocket facings. Later, Violet Ewing was assigned the regular operation of making pocket welts and pocket facings. Another employee, Margaret Britt, also made pocket facings and pocket flaps. Ewing testified credibly that none of the supervisory employees of Respondent Walton ever told her that her work was unsatisfactory or that she was not producing enough work. Violet Ewing was laid off by Respondent Walton in the January 31, 1958, layoff.

Violet Ewing joined the Union before Thanksgiving of 1957 and attended all three meetings at the Rosebud Community House. She spoke about the Union to other employees in the plant, and, although she did not specifically solicit membership, she did talk favorably about the Union. She was one of the members of the Union's volunteer organizing committee. Her name was on the letter sent by the Union to Scharff in January 1958 (G. C's Exh. 5). She was questioned by Morris Scharff regarding her authorization of the use of her name in the letter. She told him she had authorized its use. Scharff asked "if she still wanted to go along with them [the Union]." She replied in the affirmative.

Upon the termination of Violet Ewing, her job of making pocket welts was assigned to Margaret Britt, an employee with less seniority than Ewing. After the layoff, the making of pocket facings, which theretofore had been performed by Violet Ewing and Margaret Britt, was assigned to a girl named Madeline who theretofore had done small odd jobs in the collar section. Plant Superintendent Prosterman testified that in selecting Violet Ewing for layoff, he had compared her work only with that of Margaret Britt and decided that because the latter's operation was more difficult than Ewing's, he would retain Britt. Prosterman admitted that he didn't compare Ewing's operation in respect to difficulty or anything else with that performed by Madeline, the girl who took over pocket facings from both Britt and Ewing, and he offered no explanation for his failure to do so. In view of Respondent Waltons failure to explain why it did not consider and compare Ewing for retention with Madeline, Prostermans reason for retaining Britt, an employee with lesser seniority than Ewing, does not persuade me that that was the reason for Ewing's selection for layoff. Significantly, on October 7, 1958, Ewing was rehired by Respondent Walton as a utility operator, which was defined as an operator with the skill necessary to perform many operations in the plant. At the time she was rehired, according to the uncontradicted and credited testimony of Violet Ewing, Prosterman told Supervisor Grace Higgins that Violet Ewing was a good operator and would not give her any trouble. Because of the foregoing and my general lack of faith in the credibility of Prosterman to which I have heretofore adverted, I do not credit Respondent Walton's reasons for selecting Ewing, an experienced, senior and competent operator, for layoff.

e. The selection of Bonnie Hamilton for layoff

Bonnie Hamilton was hired by Respondent Walton on July 3, 1957. She was regularly assigned to the operation of sewing in welts (breast pockets), lower pockets and patch pockets. When there was not enough work to do on her regular operation, she was assigned to various other operations, to wit: sewing flap pockets, bar tacking, side seaming and back seaming. Plant Superintendent Prosterman, Morris Scharff and Supervisor Gerald Carter all testified that her work was satisfactory. Prosterman further admitted that she always made production.

Bonnie Hamilton joined the Union and attended 2 or 3 of the meetings held at the Rosebud Community House. In addition, she also attended union meetings at the home of employees Lucy Brooks and Violet Ewing, and one such meeting was held in her own home.[60] Bonnie Hamilton was also a member of the Union's volunteer organizing committee and her name was on the letter received by Respondents from the Union (G. C. Exh. 5). Upon receipt of the letter, Morris Scharff asked Bonnie Hamilton whether or not her name belonged on the letter. She replied that it did. Scharff then commented "well all right," and put a check mark alongside her name.

Another Walton employee, Lucille Yancey, also per-

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[60]The testimony as to whether the meetings at employees' homes were held prior to or after the layoff of January 31, 1953, is contradictory. Since there is no question about Respondent Walton's knowledge of the union activities of the employees involved in the layoff who are alleged as discriminatees herein, there is no necessity for any findings as to when the meetings were held.

formed the operation of sewing in welts.[61] Of the two, Bonnie Hamilton had seniority by a few days. On January 31, 1958, Hamilton was laid off and Yancey was not. Hamilton testified without contradiction that because Yancey did not like to do repair work, even that required by Yancey's own errors, Hamilton was called on by Supervisor Carter to do all the repair work on their common operation. In this connection, Walton employee, Floorworker Nellie Hood, testified without contradiction that on quite a few occasions, she had been instructed by Carter to give work to Hamilton for repair which originally had been worked on by Yancey, and that in so doing Carter said, "This is some more of Lucille's [Yancey] sorry doings." Hood further testified without contradiction, that Carter never said anything about Hamilton's work. The implication of this credited testimony is that Hamilton's work was better in quality than Yancey's and that the latter was not as cooperative as Hamilton in the matter of doing repair work.

Plant Superintendent Prosterman testified that the reason Hamilton and not Yancey was laid off was that the latter "had a greater potential and was a better operator." Supervisor Carter testified, "we felt that Lucille's [Yancey] quality was a *little better*." [Emphasis added.] He further testified that no other factors were involved in the decision to lay off Bonnie Hamilton. Morris Scharff testified that the layoff of Bonnie Hamilton was necessary because of the cut back in production but he gave no testimony as to why Hamilton rather than Yancey was selected. However, in his letter to Respondents' counsel (Charging Par-

[61] This is not the Lucille Yancey who is alleged in the complaint as a discriminatee, but another employee with the same name.

ty's Exh. 2). Scharff wrote that Yancey did "*much better* quality work and was much more versatile." Prosterman testified that Hamilton's work was not compared with any employee in the plant other than Yancey. Scharff testified that the layoff of another employee instead of Hamilton was not considered because there was "no assurance that Bonnie Hamilton would be able to do that job" and because regardless of the job she "would be put on, there would be the question of retraining the operator [Bonnie Hamilton]."

On the foregoing record, I do not credit Respondent's wholly subjective testimony regarding the reasons for selecting Bonnie Hamilton for layoff. The testimony regarding the degree in which Yancey's work was allegedly better was inconsistent, varying from Prosterman's "greater potential" and Carter's "a little better" to the statement in Scharff's letter, "much better." Moreover, there was no testimony by Respondent Walton to support the statement in Scharff's letter, that Yancey's allegedly greater versatility was the reason for her retention. This lack of consistency and shifting of reasons for Hamilton's layoff merely confirms my general disbelief in the credibility of Respondent's witnesses. The uncontradicted and credited testimony of Floorworker Nellie Hood persuades me that Yancey's work was not better than Hamilton's. Moreover, notwithstanding that Hamilton was an admittedly satisfactory and versatile employee who regularly made production and who performed, *inter alia*, side seaming while employed by Respondent Walton, a new employee and not Hamilton was hired by Respondent when a vacan-

cy in that operation occurred after the layoff. In addition to all the foregoing reasons, I am impelled to the conclusion to disbelieve the reason asserted by Respondent for Hamilton's selection for layoff, because of the failure of Respondent to compare Hamilton with other employees in the plant whose operations she occasionally performed since Respondent admittedly considered all employees in the plant in the filling of vacancies.[62] And finally, I am led to this conclusion by Respondent's failure to consider Hamilton's greater seniority.

f. The selection of Frances Elizabeth Powell for layoff

Frances Elizabeth Powell (who will be referred to herein as Johnson, her maiden name used when employed by Walton) was hired by Respondent Walton on or about July 1, 1959. She originally worked under the supervision of Gerald Carter, but just before the discharge of Lucille Yancey, hereinbefore described, she was transferred to the lining section under Supervisor Grace Higgins. Following Mrs. Yancey's discharge, Johnson was assigned to work at the operation previously performed by Yancey and was given a raise from $1 to $1.15 per hour. Plant Superintendent Prosterman complimented her work in the lining section. Johnson was paid on a straight time rather than piecework basis and thus had no makeup pay. Johnson was never criticized for her work.

Johnson signed a card for the Union and was a member of the Union's volunteer organizing committee. Her name

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[62]Her selection for such a job would have required no retraining, contrary to Scharff's testimony.

was among those on the letter sent to the Respondents by the Union (G. C. Exh. 5). She was interrogated by Morris Scharff in respect to the presence of her name on this letter. When she told Scharff that she had authorized it, he said, "Well, if that's the way you want it," and placed a check mark alongside her name. Johnson was laid off on January 31, 1958. She was never rehired.

Plant Superintendent Prosterman, first testified that Walton employed five regular and one part-time employee in the lining section. He named the five as Annie Brooks, Imogene Meeks, Odelle Barnes, Mary Barnes and Elizabeth Johnson, and the part-time employee as Mary Lou Partain. Prosterman further testified that because of the cutback in production, he had to reduce the force by two operators and since Mary Barnes and Frances Johnson were the least qualified in the section, they were selected for layoff. His testimony in respect to the number of employees in the lining section was subsequently contradicted both by his own later testimony and by his layoff report (G. C. Exh. 19) which showed Mary Barnes to be employed in the sleeve section. Prosterman further testified that Johnson had makeup pay, which I likewise do not credit since Johnson's payroll record shows no makeup and, in fact, she was working on a straight time rate of $1.15 per hour. Prosterman further testified that at the time of the layoff, Johnson was in training for the job she was then performing, and that from his observation, she was the least competent operator in the section, the least able to produce quality work. He also testified that Johnson could not perform the other jobs in the section as well as the other operators could perform Johnson's job. Prosterman testified that Respondents gave Johnson a raise of 5 cents an hour

(from $1.10 to $1.15 per hour) at the time of her transfer to the lining section as "an incentive" and "as a mark of sincerity" that Respondents were trying "to better her status." His testimony regarding the amount of the raise is contradicted by Johnson's payroll record which shows that the raise was 15 cents per hour (from $1.00 to $1.15 per hour). Although Prosterman admitted that he complimented Johnson and that he did not tell her that her work was not of good quality, he maintained nevertheless that he considered Johnson "a poor operator." However, Respondents' witness Imogene Meeks, who performed the operation following Johnson's testified that they [Meeks and Odelle Barnes] had no trouble with Johnson's work in the section. In view of the foregoing, including the admission by Prosterman that he complimented Johnson's work, the raise given to Johnson and Meeks' testimony, I do not credit Prosterman's testimony regarding the quality of Johnson's work.

Supervisor Grace Higgins testified that Johnson was slow in production and poor in quality and did not put the fullness in the proper places, but she conceded that Johnson's work was better than that of Lucille Yancey. Higgins further testified that Johnson was learning the operation which normally takes about 6 weeks. Since Higgins did not contradict Johnson's testimony that she was never advised of either poor quality or production, and Higgins' testimony as to Johnson's quality is contrary to that of Respondent's witness Meeks, I do not credit Higgins regarding the poor quality or quantity of Johnson's work.[63]

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[63] I have, in prior sections of this report, indicated my lack of faith in the reliability of Higgins' testimony.

Morris Scharff testified that Frances Johnson was laid off because there were two other topnotch operators in the section who could easily absorb the purely mechanical work that Johnson was doing. He also testified that Johnson was coming along fairly well with her training, that her work was satisfactory and that as far as he was concerned she did not do a lot of bad work. Thus, Scharff's testimony contradicts both Prosterman and Higgins regarding the quality of Johnson's work. But even Scharff's testimony regarding the reason of Johnson's selection for layoff is unreliable and I do not credit it. In his letter to Respondents' counsel (Charging Party's Exhibit 2), Scharff wrote "Frances Johnson . . ., after several months, she has shown practically no improvement." This directly contradicts his testimony that Johnson was coming along fairly well with her training.

An additional reason exists for my disbelief of the reasons assigned by Respondent Walton for Johnson's selection for layoff. Shortly after Johnson's layoff, Annie Brooks, who sewed the backs and yokes in the lining section, was fired by Walton because of poor quality and lack of production.[64] Prosterman testified that the trouble with Annie Brooks' work was "fairly constant." In spite of that, Annie Brooks was not laid off in the January 31, 1958, layoff, her name was not in Prosterman's report made in preparation for the layoff, and although both worked in the same section, the alleged area of competition used by Respondents in selecting employees for the layoff, no comparison was made of

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[64] The date of Brooks' discharge does not appear in the record. However, according to Prosterman's testimony, Annie Brooks was replaced by Mary Barnes and the latter's payroll (G. C. Exh. 30-B) reveals that she was rehired on March 6, 1958.

Johnson vis-a-vis Brooks nor any explanation offered as to why Brooks was not laid off instead of Johnson.

In view of the foregoing, I do not believe Respondent Walton's reason for Johnson's selection for layoff.

g. The selection of Ida Harper for layoff

Ida Harper was hired by Respondent Walton on July 17, 1957. She was assigned to the operation of felling the lining to the coat and worked on a machine known as the Lewis blind stitch machine. The machine frequently did not function properly and required repairs. When the machine was functioning properly and there was sufficient work for her to do, Ida Harper was able to perform her operation on 80 to 90 coats per hour. However, there were frequently periods when she did not have enough work to do. When this occurred, she was occasionally assigned to assist Inspector Sarah Elizabeth Sanders, or was told by her supervisor, Myrtle Ewing, that she had no work for her to do and to take time out and go to the washroom. Harper was never told that her work was unsatisfactory. The operation which Ida Harper performed at the Walton plant was that following the operation of basting the lining to the coat performed by Charlotte Finley. Harper testified without contradiction that her job was more difficult than Finley's, her machine was more intricate than the one operated by Finley, her machine used a bobbin whereas Finley's did not, and that her operation required changing the color of the thread to match the coat color, whereas on Finley's job, the thread used was always the same color. Notwithstanding this, Harper was always able to keep abreast with

the flow of work which came to her from Finley, except when she was taken off her job to do something else or her machine was not functioning properly. Ida Harper was one of Walton's employees who were laid off on January 31, 1958, and she was never rehired. Finley was not one of those terminated.

Prior to the layoff, Ida Harper had joined the Union and had attended the Union's meeting at the Rosebud Community House on January 9, 1958. She was also a member of the Union's volunteer organizing committee. Harper was questioned by Morris Scharff about the use of her name on the Union's letter which advised Respondents of the names of the members of the Union's committee. In response to his query, she told Morris Scharff that she had authorized the use of her name. Scharff asked Harper whether she wanted her name to stay on the letter and she replied that she did. Morris then stated, "You know what this leads up to."

A number of reasons were asserted by Respondent Walton for Harper's selection for layoff. These were, according to Plant Superintendent Prosterman: (1) Harper could not produce properly and it took her 6 to 8 hours per day to do the job which should take only 4; (2) she had a bad attendance record; (3) she had a poor general attitude; (4) her makeup record was bad; (5) she did not "take kindly" to her supervisor's request for increased production; (6) she played around and spent a lot of time in the washroom; and (7) she talked excessively. Prosterman testified that

Harper had been warned about these matters.[65] The reasons assigned by Prosterman for Harper's selection for layoff will be considered seratim.

1 and 4. Harper's failure to make production is confirmed by her payroll record which discloses that she continually had makeup pay during her employment by Walton. However, Harper's makeup pay does not establish Prosterman's assertion that she "could not produce properly" for as Prosterman testified, she was capable of rapid work. Her makeup pay was equally attributable to the frequent malfunctioning of Harper's machine or the insufficient work available for her to perform, or both, in respect to which I credit Harper's uncontradicted testimony. Moreover, in Prosterman's report to Morris Scharff in preparation for the layoff (G. C. Exh. 19), not only was makeup pay not asserted as a reason for Harper's selection for termination, but the only reason stated therefor was, "Insufficient work to be done by Geneva [Harris] better and older operator seniority." This, of course, corroborates Harper's testimony regarding lack of sufficient work to keep her occupied full time and explains her makeup pay. For all the foregoing reasons, including the failure of General Counsel's Exhibit 19 to refer to Harper's inability to produce or her makeup pay as a reason for her selection for layoff, I do not believe Prosterman's testimony that inability to produce sufficiently or makeup pay was a reason for Harper's selection for termination.

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[65] I understand Prosterman's testimony to mean that he instructed Harper's supervisor to "warn" Harper. In view of Prosterman's apparent lack of personal knowledge, his testimony regarding the alleged warnings is evidently based on hearsay. Prosterman admitted that Harper had never been warned regarding absenteeism.

2. I have compared the number of hours worked by Harper with those worked by other employees of Respondent Walton who were not terminated, and the payroll records show that Harper worked more hours than many of the retained employees. In view of Respondent Walton's admission that Harper was never told that she was excessively absent and the fact that Walton's records do not disclose that she was, I do not credit Prosterman's testimony that absenteeism was a reason for Harper's selection for termination.

3 and 5. The only specific testimony, if any, by Prosterman regarding Harper's alleged "poor general attitude" was his statement that she did not "take kindly" to her supervisor's request for increased production. Since I credit Harper's testimony that she was never told she was doing insufficient work and her uncontradicted testimony that she kept abreast of all the work that came to her from Charlotte Finley and that there was insufficient work to keep her occupied all the time, I do not believe either that Harper was requested to increase her production or Prosterman's vague testimony regarding her "poor general attitude."

6 and 7. Since none of the other reasons (that she played around, spent a lot of time in the washroom and talked excessively) were alluded to in Prosterman's report to Scharff

in preparation for the layoff, I do not believe that these were the reasons for her layoff and I do not credit them.[66]

Harper's supervisor, Myrtle Ewing, first testified that Harper was discharged, not laid off.[67] Ewing testified that the reasons for Harper's discharge were, a "cumulation of bad work," that Harper was immature and would not settle down and work, and absenteeism. Ewing further testified that she spoke to Harper daily about her bad work. On cross-examination, she testified that her daily talks with Harper were not about "so much bad work, it was just a lack of work." I do not credit Myrtle Ewing's testimony in any respect in which it conflicts with that of Ida Harper. Ewing's testimony that Harper was discharged, not laid off, is contrary to the entire record which shows that Harper was one of 16 employees laid off on January 31, 1958. Her testimony that Harper's alleged discharge was for "bad work" asserted a reason for her termination not included in the many advanced by Prosterman. In view of the absence of any specificity regarding the alleged nature of the bad work, I do not credit Ewing's testimony that Harper's alleged "bad work" was a reason for Harper's selection for layoff. As aforestated, the record does not sustain Ewing's

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[66]Harper's testimony, that she was frequently told by her supervisor that there was no work for her to do and to take time out and go to the washroom was not controverted by the supervisor although the latter testified for Respondent Walton.

Prosterman was asked why, if Harper was such an unsatisfactory employee, she was not fired before the layoff. His explanation, that production was needed from Harper's section and that her machine was difficult to learn, I find implausible, in view of the lack of sufficient work to keep Harper busy and the fact that Walton had in its employ, an allegedly experienced operator, Geneva Harris, to whom this operation was assigned after Harper's layoff.

[67]She subsequentiy contradicted this by saying that she did not know whether Harper was discharged or laid off.

testimony that Harper was excessively absent. Moreover, since I credit Harper's testimony that she was never told either that her work was unsatisfactory, that her work attitude was poor, or that she loafed, I do not credit Ewing's testimony that she spoke to Harper daily about her bad work or lack of work.[68] Accordingly, I do not credit Ewing's testimony regarding the records for Harper's termination.

Morris Scharff testified that Harper was a completely unsatisfactory employee, both as to quality and quantity of work and conduct, and should have been discharged not laid off. However, Scharff offered no explanation as to why Harper had not been discharged before the layoff. As noted above, insofar as Harper's alleged poor quality was concerned, Scharff's testimony asserts a reason for layoff not advanced by Plant Superintendent Prosterman. Moreover, Scharff's letter to Respondent's counsel (Charging Party's Exhibit 2) did not assign as a reason for her layoff either bad quality or bad conduct. The letter stated:

> Ida Harper had constantly shown makeup pay, with very little signs of improvement, even after many months of training.

Accordingly, I do not credit Scharff's testimony that either poor work quality or bad conduct was a reason for Harper's selection for layoff.[69]

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[68] As aforestated, Ewing did not deny Harper's testimony that Ewing told Harper to go to the washroom when there was insufficient work for her.

[69] For the reasons hereinabove stated in connection with Prosterman's testimony, I also do not believe that her makeup pay was a reason for Harper's termination.

In addition to the foregoing, the record discloses an additional ground for disbelieving the reasons asserted by Respondent Walton for Harper's selection for layoff. Superintendent Prosterman testified that in selecting Harper for layoff, her work was compared only with that of Gereva Harris and no one else. No reason was offered for not comparing Harper with other employees in the section in which she worked.[70] Thus, no reason was given for not comparing Harper with Finley who, on the basis of Harper's uncontradicted testimony, performed a less difficult operation in the section than Harper did. The failure to compare Finley with Harper is especially significant in view of the fact that a short time after Harper's layoff, Finley was assigned to perform Harper's operation of working on the Lewis blind stitch machine, an admittedly difficult machine to learn, even though Finley had no prior experience on this machine. An examination of Finley's payroll record discloses moreover that she was junior in length of service to Harper and also frequently had makeup pay when she was not working on a straight-time basis. I therefore regard Respondent's failure to compare Harper with Finley, and the discredited and inconsistent reasons asserted for Harper's selection for termination, to be indicative of a determination to dispense with her services for a reason or reasons other than those asserted by Respondent Walton.

h. The selection of Pauline McGee for layoff

Pauline McGee was hired by Respondent Walton on Aug-

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[70]As aforestated, Prosterman had testified that in selecting employees to be terminated, comparisons were made on a section by section basis.

ust 12, 1957. During the first 3 months of her employment, her job was basting the hems and linings of coats. When Walton changed from full lined to half lined coats, McGee was assigned to the operation of basting the hems and turning the vents. Mrs. McGee received no complaints from Respondent's supervisory staff that her work was either insufficient in quantity or inadequate in quality. On the contrary, she was told by Plant Superintendent Prosterman that she was doing "fine."

McGee signed a card for the Union and attended two union meetings at the Rosebud Community House, the last one being January 9, 1958. She also solicited employees in her car pool to sign up with the Union. She was one of the Union's volunteer organizing committee whose names were on the letter sent to Respondents by the Union. McGee was questioned by Morris Scharff as to whether she had authorized the use of her name on the letter (G. C. Exh. 5). She told Scharff that she had. Scharff then asked McGee, "Do you know what that means?" She replied, "Yes sir." She was laid off on January 31, 1958. Since then, she has applied on several occasions for reemployment by Walton but was not rehired, notwithstanding that Walton has since hired new and inexperienced employees.

Plant Superintendent Prosterman testified that he selected Pauline McGee for termination because her job was similar to the job performed by Charlotte Finley and because Finley showed greater potential, progressed more rapidly and earned more money than McGee. Prosterman testified that Charlotte Finley's operation was lining basting and that both McGee and Finley used a basting machine. He further testified that he decided to retain Finley because

she had seniority over McGee. Prosterman admitted that the choice between McGee and Finley was close and that McGee was capable of doing either job. When asked what he meant by his testimony that Finley had progressed more rapidly, Prosterman testified, "Both of the girls were showing makeup at the time" but "Charlotte Finley had shown greater progress — she earned more money on the job." He further stated that he based Finley's alleged greater rate of progress from the time both started on the new operation.[71] Prosterman admitted that in addition to doing basting, McGee's job required her to turn up and measure vents, whereas Finley did not have to do anything other than the basting operation. Moreover, Prosterman admitted that after McGee's layoff, it was necessary for Geneva Harris to assist Charlotte Finley in performing McGee's operation "while Charlotte Finley was learning the operation — in order to maintain production until Charlotte Finley got to the point where she could handle it all . . ." He further testified that "a certain amount of training was required to bring Charlotte Finley up to production," and that such "training was required not to learn the operation, but to gather speed," since "Charlotte Finley had done this work previously."

I place no credence in the reasons asserted by Prosterman for McGee's selection for layoff. His subjective testimony that Finley "had shown greater progress" and "greater potential" is unsupported by any credible specific testimony, and is contrary to the testimony that Finley, notwithstand-

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[71] I assume from this testimony that Prosterman was referring to the time Walton started to make half lined coats. Prosterman testified that this took place shortly after he started to work for Walton, after Labor Day, 1957.

ing her alleged performance of McGee's operation before the layoff, required training and assistance thereon to maintain Walton's reduced production requirements.[72] Moreover, Prosterman's testimony, that Finley "earned more money on the job" than McGee, is refuted by a comparison of Respondent Walton's payroll records for these employees. These records disclose that McGee's gross pay for the last quarter of 1957 were $439.8[illegible] whereas Finley's gross earnings for that period were $3[illegible]3.49.[73] Similarly, in the 6 succeeding weeks shown on Respondent Walton's 1958 payroll records, McGee's gross earnings were $231.20 whereas Finley's were $223.15.[74] And, in the last 4 weeks before McGee's termination a period during which McGee and Finley both worked almost exactly the same number of hours,[75] McGee earned $174.60 to Finley's $170.21. On the foregoing documentary record, Prosterman's testimony that Finley earned more money than McGee is without foundation and I do not credit it. As aforestated, Prosterman admitted that McGee was capable of performing Finley's operation. Since McGee's job required an additional operation (the turning and measuring of vents) not performed by Finley, it was to that extent, more difficult to

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[72] As aforestated, Respondent's reasons for the layoff of employees was a cutback in its production requirements from 450 to 300 suits per day.

[73] I selected this period for comparison to conform with Prosterman's testimony that he compared the rate of progress of these two employees from the time of the changeover to half lined coats. During this period McGee worked 52½ more hours than Finley. However, she earned $66.14 more than Finley. Thus, Prosterman's unqualified testimony that Finley earned more money, is untrue.

[74] During this period McGee worked 4½ hours more than Finley and earned $8.05 more than the latter.

[75] McGee worked 160¼ hours. Finley worked 160 hours.

perform with necessary production speed than Finley's.[76] Accordingly, one would assume that Prosterman would have retained McGee rather than Finley.[77] Significantly, Prosterman's report to Morris Scharff in preparation for the layoff (G. C. Exh. 19), asserts as the only reason for McGee's selection for layoff, Finley's "seniority." For all the foregoing reasons, I do not credit Prosterman's subjective testimony that Finley showed "greater potential" and "progress" than McGee, nor that Finley earned more money than McGee, and I do not believe that these were the reasons for McGee's selection for layoff.

I also do not believe that Finley's greater seniority was the real reason McGee was selected for layoff.[78] Allegedly, seniority was only followed by Respondents in their layoff selections when all other factors were equal. The record herein discloses that seniority was frequently disregarded by Respondents in making their layoff selections. Thus, although Finley had less seniority than Ida Harper who worked in the same section on a more difficult machine, Finley was retained and Harper was terminated. Moreover, notwithstanding that selections for termination were allegedly made on a section by section basis, no explanation was offered by Respondents for their failure to compare Harper with Finley. Furthermore, as hereinabove noted, seniority was also disregarded in the selection of Evelyn Hudson, Violet Ewing and Bonnie Hamilton for layoff. According to Prosterman, one of the considerations which motivated his selections for layoff, was the need

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[76] This was demonstrated by Finley's subsequent inability to cope with McGee's job without training and assistance.

[77] Prosterman asserted the greater difficulty of Margaret Britt's job as his reason for retaining her rather than Violet Ewing, an employee with greater seniority.

[78] The difference in their length of service was 3 weeks.

for keeping the cost of training employees to a minimum. In the instant case, McGee, who admittedly was capable of doing Finley's job, would not have required training whereas the latter did need training and assistance to cope with McGee's. From this, it would appear that Prosterman would have disregarded seniority as as he did in other cases. Accordingly, I do not believe that seniority was the true reason for McGee's selection for termination.

My refusal to credit the reasons assigned by Prosterman for McGee's selection for termination is further based on the fact that although McGee was admittedly a satisfactory employee, she was never rehired although she applied to Respondent for work, and yet new employees with no prior experience were hired by Walton after the layoff. Prosterman testified that he did not rehire McGee because none of the vacancies required her skill. He admitted, however, that the new employees had never worked in clothing factories or made coats. Nevertheless, Prosterman maintained that the new employees' skills could be better applied than Pauline McGee's. I find this testimony incredible and I refuse to believe it.

Supervisor Myrtle Ewing testified that McGee was laid off only because of the greater seniority of Finley. I have hereinabove set forth my reasons for disbelieving that seniority was the reason for McGee's termination. Morris Scharff testified that the reason was that Finley was a better operator and did better work than McGee. Thus, Scharff's testimony adds an additional reason for McGee's selection for layoff (Finley's alleged better quality) to which neither Prosterman nor Supervisor Ewing alluded. For that reason and because I do not regard Scharff as a

credible witness generally, I do not believe that Finley's alleged better quality was the reason for McGee's selection for layoff. Scharff also testified that he did not transfer McGee to another job because it would have required retraining her. Of course, it would not have required retraining for McGee to take over Charlotte Finley's job.

On the foregoing record, and my general lack of faith in the credibility of Prosterman, Myrtle Ewing and Morris Scharff, I cannot and do not credit the reasons assigned by Respondent Walton for McGee's selection for layoff.

i. The selection of Nellie Hood for layoff

Nellie Hood was employed by Walton on July 1, 1957. Her job was to mark the welts and patch pockets, match the pockets with the fronts of the coat and carry bundles to the girls. After Hood had been employed by Walton for about 3 months, she was assigned to matching the backs with the fronts of coats and continued to carry bundles. When first hired, Hood was paid $1 an hour, but beginning with the week ending September 13, 1957, she was given a raise to $1.10 an hour. Hood was never told that ther work was unsatisfactory by any of Respondent's supervisors or officials.

Nellie Hood signed a Union card and was a member of the Union's volunteer organizing committee whose names were sent to Scharff by the Union (G. C. Exh. 5). During rest breaks and lunch periods, Hood spoke favorably about the Union to the employees in the plant. Morris Scharff questioned Hood as to whether she authorized the use of her name in the Union's letter, and when she replied in

the affirmative, he said, "alright" and put a check mark along side her name.

According to Plant Superintendent Prosterman, Nellie Hood was selected for layoff because her work did not require much skill, and, in view of the cutback in production, it was felt that her work could be absorbed by other employees. He further testified that following Nellie Hood's layoff, her work was partially performed by Gerald Carter, her supervisor, and partially by other operators in the section whenever they had time to spare. Supervisor Carter testified that after Hood was laid off, her job of marking the flaps was assigned to Francis Green and that of carrying of bundles was done by him.

There was no testimony that in selecting Hood for layoff, she was compared with any other employee of Walton. On the other hand, there was testimony that there were other unskilled jobs in the plant, e. g., Sarah Sanders was an inspector and floor girl, Francis Green marked and trimmed undercollars, and other employees did trimming, basting pulling and inspection.[79] No reason was given for not comparing Hood with such other unskilled jobs in the plant and there was no testimony that Hood was either incapable of performing such unskilled work or that her work, while employed by Walton, had been unsatisfactory. Moreover, a comparison of Walton's payroll records for Francis Green and Nellie Hood discloses that Hood had seniority of almost 3 months over Green, who first started work for Walton about September 26, 1957.

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[79] According to Respondent's Exhibit 9, Grace Johnson was hired for the job of trimming, basting pulling and inspection on June 27, 1958.

In view of the complete absence of any testimony explaining the method or means by which Hood, rather than one of the other unskilled employees, was selected by Respondent for layoff, and the fact that Hood, an admittedly satisfactory employee had seniority over Francis Green who took over part of Hood's work, and on the entire record herein, I do not believe Respondent's asserted reason for Hood's selection for layoff.

F. *Concluding findings in respect to the selection of the alleged discriminatees for layoff*

My conclusions herein before set forth, that the reasons asserted by Respondents for the selection for layoff of Lela Beaver, Nellie Wood, Evelyn Hudson, Violet Ewing, Bonnie Hamilton, Frances Elizabeth Johnson, Ida Harper, Pauline McGee and Nellie Hood, are unworthy of belief and discredited, are not, of course, the equivalent of a finding that said employees were so selected by reason of their union adherence and or activity. However, the record herein provides ample support for the latter conclusion. As I have already found, the Respondents were admittedly hostile to the Union's organizational efforts and upon its inception, took active steps to prevent its success. These steps included: (1) a letter to their employees outlining new benefits, paid vacations and holidays which employees could enjoy without paying "dues or initiation fees to any outside union"; (2) following a union organizer while she was engaged in soliciting membership in the Union; (3) taking down the license numbers of the organizers' cars; (4) antiunion speeches to Respondents' employees in which Morris Scharff, Respondents' principal operating official,

threatened to terminate his association with Respondents if the Union became the employees' representative; (5) interrogation of employees regarding attendance at union meetings and the creation of the impression that Respondents had engaged in surveillance of union meetings by stating that Respondents knew everybody who attended; (6) the threat, conveyed by a supervisor to an employee, that Respondents would close down the plant rather than work with union labor; (7) the threat by a supervisor to an employee to "shut up talking about the Union" "if you don't want to dig your own grave"; (8) the threat conveyed by a supervisor to an employee that Respondents would discharge an employee, no matter how competent, if she joined the Union; (9) the promulgation of a rule at the pants plant against talking about the Union, not limited to working hours; (10) the threat by the pants plant superintendent that he would cease attempting to get work for the employees, if they persisted in talking about the Union; and (11) the discharge of Lucille Yancey, Grace McCart, Pearl Coker and Ruth Brooks, because of activity in support of the Union.[80] Having thus disposed of the threat posed by the employees whom Respondents regarded as the Union ringleaders, the Respondents were then faced with a new threat, the Union's letter naming a dozen members of the Union's volunteer organizing committee. Thereupon, Respondents ascertained by interrogation that at least all but one of the employees named in the letter were steadfast in their union adherence, and seized upon the opportunity presented by the contemplated layoff to get rid of

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[80]The fact that Jeanette Beaver and Mary Lou Partain, prounion employees, were not likewise fired does not exculpate Respondents from the charge of discrimination as to those discharged. *N. L. R. B. v. Link Belt Co.*, 311 U. S. 584, 602; *N. L. R. B. v. W. C. Nabors Co.*, 196 F. 2d. 272, 276 (C. A. 5).

the members of the Union committee. In the layoff which followed, all but two of the dozen union committee members were laid off,[81] and, although new and inexperienced employees were subsequently hired by Respondents, many of those laid off were never recalled. The disparate number of union committee members laid off in the coat plant in relation to the total number laid off in that plant and the total employment therein, is in itself, although not conclusive, persuasive evidence of discrimination. *N. L. R. B.* v. *W. C. Nabors*, 196 F. 2d 272, 275-6 (C. A. 5); *N. L. R. B.* v. *Chicago Steel Foundry*, 142 F. 2d 306, 308 (C. A. 7); *N. L. R. B.* v. *Sifers*, 171 F. 2d 63, 65-6 (C. A. 10); *Harold W. Baker*, 71 NLRB 44, 59. Thus, in a 15 percent reduction in force in the coat plant,[82] 82 percent of the Union's committee in the plant[83] were laid off. In addition, Lela Beaver, the only union committee member in the pants plant, was also laid off. I am asked to believe that this almost complete elimination from employment of the members of the union's committee is pure coincidence. I find it incredible, not only because of its mathematical improbability,[84]

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[81] All but one, if Jeanette Beaver whom Respondents apparently placed in a different category, is excluded. See I. R. p. 114, l. 10-23.

[82] Sixteen employees out of a total complement of 105 were laid off.

[83] Nine union committee members out of eleven who worked in the coat plant were laid off. If Jeanette Beaver is excluded from consideration as a union committee member (See fn. 81), the number of union committee members laid off in the coat plant would be 9 out of 10. The tenth union committee member was also scheduled for layoff but for some unexplained reason Respondents changed their mind. See fn. 45 and I. R. p. 114 l. 23-25.

[84] On the basis of pure chance and eliminating all other factors, the possibility of selecting for layoff 9 out of 11 union committee members in a total layoff of 16 employees in a plant of 105, is comparable to a blindfolded person picking at least 9 black balls out of 16 picks from a bowl containing 11 black and 94 white balls. The mathematical possibility of such a selection, computed on the basis of the applicable formula, would be one chance out of 2,758,590. See *Uspensky, Introduction to Mathematical Probability*, (McGraw-Hill, 1937), chapter 1.

but also because Respondent's total pattern of conduct to resist and defeat the Union's organizational effort, herein persuades me that this was no happenstance. On the contrary, I am persuaded by the entire record, that the cut back in production was utilized by Respondents as a convenient device to carry out the threat of Morris Scharff to remove their payrolls of known union adherents.[85] I am further persuaded that the Respondents' application in the layoff of a different standard of comparison than that used in the selection of employees in the filling of vacancies, and the nonuniform application of the alleged standards for retention, were merely means utilized by Respondents to achieve a predetermined result, the discharge of the Union's proponents.

I therefore find and conclude that Respondents selected Lela Beaver, Nellie Wood, Evelyn Hudson, Violet Ewing, Bonnie Hamilton, Frances Elizabeth Johnson, Ida Harper, Pauline McGee and Nellie Hood for layoff because of their membership in the Union's volunteer organizing committee. By such conduct, Respondent discriminated in respect to the hire and tenure of employment of said employees, thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act.

IV. The effect of the unfair labor practice upon commerce

The activities of the Respondents, set forth in Section III, above, occurring in connection with the operations of

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[85] As aforestated (I. R. p. 77, l. 2-11.) Supervisor Myrtle Ewing told her sister-in-law Violet Ewing that Morris Scharff said he would fire any operator, no matter how competent, if he found out she had joined the Union.

the Respondents described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy

In view of my finding that both Respondents constitute a single, integrated employer within the meaning of the Act, I shall recommend that both shall be jointly and severally responsible for remedying the unfair labor practices herein. Since I have found that Respondents have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondents have discriminated and continue to discriminate against Lucille Yancey, Ruth Brooks, Lela Beaver, Evelyn Hudson[86] Bonnie Hamilton, Pauline McGee, Ida Harper and Frances Elizabeth Powell in respect to hire and tenure of employment, I will recommend that the Respondents be ordered to offer each of them immediate and full reinstatement to their former or substantially equivalent position without prejudice to their seniority and other rights and privileges, and

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[86]Evelyn Hudson was rehired by Walton on June 18, 1958, and assigned to the admittedly most difficult operation in the sleeve section, that of sleeve making. She was discharged again in August 1958, because of her inability to perform that operation. I therefore find and conclude that the rehiring of Hudson was not the equivalent of her reinstatement to her former or substantially equivalent position.

make each of them whole for any loss of earnings they have suffered because of the discrimination against them, by payment of a sum of money equal to the amount each of them normally would have earned as wages from the date of her discharge to the date of the offer of reinstatement, less her net earnings during said period, with backpay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth*, 90 NLRB 289, 291-294. Having further found that Respondents have discriminated against Grace McCart, Nellie Wood, Pearl Coker, Violet Ewing and Nellie Hood[87] in respect to hire and tenure of employment, but that Respondents have since rehired these employees, I will recommend that the Respondents be ordered to make each of them whole for any loss of earnings suffered because of the discrimination against them, by payment of a sum of money equal to the amount each of them normally would have earned as wages from the date of her discharge to the date of each rehiring, less her net earnings during said period, with backpay computed on a quarterly basis in the manner set forth above. In the case of Nellie Hood, I shall further recommend that she also be made whole for the period of her second employment with Respondent Walton for the difference between what she received in compensation from said Respondent and what she would have received at her previous rate of $1.10 per hour. I will also recommend that the Respondents make available to the Board upon request, payroll and other records to facilitate the determination of the amounts due under this recommended remedy.

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[87]Nellie Hood was rehired on July 14, 1958, and was assigned to the same type of work she had previously performed, matching, carrying bundles and shanking buttons on the machine. However, upon her reemployment, she was given a cut in her hourly rate. Thereafter, she voluntarily quit her employment on October 3, 1958.

In view of the nature of the unfair labor practices committed, the commission of similar and other unfair labor practices reasonably may be anticipated. I shall therefore recommend that the Respondents be ordered to cease and desist from in any manner infringing upon the rights guaranteed to its employees by Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. Respondents Walton Manufacturing Company and Loganville Pants Company constitute a single, integrated employer within the meaning of the Act.

2. Amalgamated Clothing Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By discriminating in respect to the hire and tenure of employment of Lucille Yancey, Grace McCart, Pearl Coker, Ruth Brooks, Lela Beaver, Nellie Wood, Violet Ewing, Evelyn Hudson, Bonnie Hamilton, Ida Harper, Pauline McGee, Frances Elizabeth Powell (nee Johnson) and Nellie Hood, thereby discouraging membership in Amalgamated Clothing Workers of America, AFL-CIO, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By the foregoing conduct and by interfering, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, the Respondents

have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. The General Counsel has not sustained the burden of proof of the allegations contained in paragraph 19 and 21 of the complaint.

6. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondents Walton Manufacturing Company and Loganville Pants Company, their officers, agents, successors, and assigns, shall jointly and severally:

1. Cease and desist from:

(a) Discouraging membership in and activities on behalf of Amalgamated Clothing Workers of America, AFL-CIO, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any other term or condition of employment;

(b) Following or otherwise engaging in surveillance of union organizers; threatening employees with discharge, shutdown of the plant or with other economic sanctions to discourage union affiliation or adherence; coercively or otherwise unlawfully interrogating employees regard-

ing their union membership or activities; prohibiting employees from talking about the Union in the plant during nonworking hours; or in any other manner interfering with, restraining or coercing employees in the exercise of the right to self-organization, to form or assist labor organizations, to join or assist Amalgamated Clothing Workers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act and to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer to Lucille Yancey, Ruth Brooks, Lela Beaver, Bonnie Hamilton, Pauline McGee, Frances Elizabeth Powell, Ida Harper and Evelyn Hudson immediate and full reinstatement to their former or to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of earnings she may have suffered as a result of the discrimination against her, as provided in the section of this report entitled "The Remedy";

(b) Make whole Nellie Wood, Violet Ewing, Grace McCart, Pearl Coker and Nellie Hood for their respective loss of earnings as a result of the discrimination against

them, as provided in the section of this report entitled "The Remedy";

(c) Preserve and make available to the Board or its agents, upon request for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the right to reinstatement under the terms of this Recommended Order;

(d) Post at their plant or plants in Loganville, Georgia, copies of the notice attached hereto and marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Tenth Region shall, after being duly signed by Respondents, be posted immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places where notices to employees are customarily posted. Respondents shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material;

(e) Notify the aforesaid Regional Director in writing within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order what steps the Respondents have taken to comply herewith.

I further recommend that unless Respondents shall within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Rela-

tions Board issue an order requiring the Respondents to take the aforesaid action.

Dated at Washington, D. C., this 15 day of May 1959.

(Signed) SAMUEL ROSS
Samuel Ross
Trial Examiner

APPENDIX A

NOTICE TO ALL EMPLOYEES
PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in or activities on behalf of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, by discharging, laying off, or refusing to reinstate any of our employees or in any other manner discriminating against our employees in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT PROHIBIT any of our employees from talking about unions on our property during nonworking hours.

WE WILL NOT threaten our employees with discharge, shutdown of the plant, or with any other economic sanction to discourage them from joining or assisting labor organizations or engaging in other concerted activities for mutual aid or protection.

WE WILL NOT follow or otherwise engage in surveillance of union organizers or agents.

WE WILL NOT coercively or unlawfully interrogate our employees regarding their union membership or activities.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL offer to LUCILLE YANCEY, RUTH BROOKS, LELA BEAVER, BONNIE HAMILTON, PAULINE McGEE, IDA HARPER, FRAN-

CES ELIZABETH POWELL and EVELYN HUDSON, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination against them.

WE WILL also make whole NELLIE WOOD, VIOLET EWING, GRACE McCART, PEARL COKER AND NELLIE HOOD for any loss of pay suffered by them as a result of the discrimination against them.

All our employees are free to become or remain or to refrain from becoming or remaining members of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

WALTON
MANUFACTURING
COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

LOGANVILLE
PANTS COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof and must not be altered or covered by any other material.

GENERAL COUNSEL'S EXCEPTIONS TO THE INTERMEDIATE REPORT

(Number and Title Omitted)

Counsel for General Counsel in these cases excepts to the Intermediate Report, issued on June 5, 1959 by Trial Examiner Samuel Ross, in the following particulars:[1]

1.

The failure "to consider or pass upon the additional incidents of interrogation allegedly engaged in by Morris Scharff and by Respondent's supervisors, Gerald Carter, Myrtle Ewing . . . and Edna Atha." (I.R. p. 75, lines 18-27)[2]

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[1]Counsel for General Counsel agrees with the general findings and recommendations of the Trial Examiner, but excepts to certain specific findings and to the Trial Examiner's failure to make certain findings.

[2]The Trial Examiner also included in the quoted language the name of Grace Higgins. However, no interrogation by Higgins was alleged in the complaint.

2.

The failure to find that interrogation of Violet Ewing by Forelady Myrtle Ewing as to whether she knew that Union organizers were around (I. R. p. 77, lines 2-9) violated Section 8 (a) (1) of the Act.

3.

The failure to find that Foreman Gerald Carter admittedly interrogated Nellie Hood on or about December 5, 1957, as to what Hood knew about the Union. (T. p. 523, line 19 to p. 524, line 9; p. 1096, lines 17-21.)

4.

The failure to find that the said interrogation of Nellie Hood by Foreman Gerald Carter, on or about December 5, 1957, as to what she knew about the Union (Exception 3, *supra*), violated Section 8 (a) (1) of the Act.

5.

The failure to find that on or about January 27, 1958, Foreman Gerald Carter admittedly accused Nellie Hood of having lied to him when, on or about December 5, 1957, he had interrogated her as to her knowledge of the Union. (T. p. 525, lines 3-12; p. 1097, lines 1-5.)

6.

The failure to find that the said accusation of lying, directed by Foreman Gerald Carter to Nellie Hood on or about

January 27, 1958 (Exception 5, *supra*), constituted interrogation of Hood.

7.

The failure to find that the said interrogation of Hood by Foreman Gerald Carter on or about January 27, 1958 (Exceptions 5 and 6, *supra*), violated Section 8 (a) (1) of the Act.

8.

The failure to find that Forelady Edna Atha admittedly interrogated employees, in latter November or early December, 1957, as to whether the Union people had been to see them. (T. p. 643, line 4 to p. 644, line 2; p. 555, lines 8-20; p. 1115, line 10 to p. 1116, line 2.)

9.

The failure to find that the said interrogations of employees by Forelady Edna Atha in latter November or early December, 1957 (Exception 8, *supra*), violated Section 8 (a) (1) of the Act.

10.

The failure to find that on or about January 10, 1958, Forelady Edna Atha admittedly interrogated Pauline Spradlin as to the subject of conversation between Spradlin and Nellie Wood. (T. p. 655, line 12 to p. 656, line 20; p. 1120, line 13 to p. 1121, line 3.)

11.

The failure to find that the said interrogation of Pauline Spradlin by Forelady Edna Atha as to the subject of conversation between Spradlin and Nellie Wood (Exception 10, *supra*) violated Section 8 (a) (1) of the Act.

12.

The failure to find that Lucille Yancey was an employee within the meaning of the Act at the time Morris Scharff told her that he was informed that she and her husband had been working with the Union organizers. (I.R. p. 84, lines 25-30; p. 97, lines 14-19.)

13.

The failure to find that Morris Scharff's statement to Lucille Yancey, that he was informed that she and her husband had been working with the Union organizers (I.R. p. 84, lines 25-30; p. 97, lines 14-19), constituted interrogation of Yancey as to union activity.

14.

The failure to find that the said interrogation of Yancey by Morris Scharff (Exception 13, *supra*) violated Section 8 (a) (1) of the Act.

15.

The failure to find that Morris Scharff's interrogation of Lucille Yancey as to where her husband worked and if he was an officer of a union (I.R. p. 84, lines 30-31; p. 85, line 1; p. 97, lines 14-18) violated Section 8 (a) (1) of the Act.

16.

The failure to find that Morris Scharff's promise to Lucille Yancey that if the Union did not get in he would reinstate her (I.R. p. 85, lines 3-10; p. 97, lines 14-20), violated Section 8 (a) (1) of the Act.

17.

The finding and conclusion that General Counsel did not sustain the burden of proof of the allegation of paragraph 19 of the complaint with respect to conditioning employment opportunities upon whether or not the Union became the representative of Respondent's employees. (I.R. p. 81, lines 19-23; p. 158, lines 4-6.)

18.

The recommendation that paragraph 19 of the complaint be dismissed. (I.R. 158, lines 4-6.)

19.

The finding that Morris Scharff's statement to Nellie Wood, "Let's wait and see what the Union does", when

Wood asked about a job for her stepdaughter, Gibson (I.R. p. 80, lines 28-30; p. 81, lines 1-7), was ambiguous and capable of many interpretations.[3]

20.

The implied finding that the said statement of Morris Scharff to Nellie Wood (Exception 19, *supra*) contained no discriminatory import unless it could be interpreted as necessarily implying that a job would be given to Gibson if the Union did not become the representative of Respondent's employees. (I.R. p. 81, lines 17-23.)

21.

The failure to find that the said statement of Morris Scharff to Nellie Wood (Exception 19, *supra*) violated Section 8 (a) (1) of the Act.

22.

The failure to find that Morris Scharff's statement to Lela Beaver, that if the Union came in he would go out the back door (I.R. p. 117, lines 16-21), constituted a threat of economic reprisal.

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[3]Through typographical error, the Intermediate Report says that paragraph 19 of the complaint alleged that Respondent conditioned employment opportunities for "respective" employees . . . , rather than for "prospective" employees.

23.

The failure to find that Lela Beaver was an employee within the meaning of the Act when Morris Scharff told her that if the Union came in he would go out the back door (I.R. p. 117, lines 16-21), and when he interrogated her as to how she got mixed up with the Union. (I.R. p. 117, lines 19-21.)

24.

The failure to find that Morris Scharff's said statement to Lela Beaver (Exception 22, *supra*) violated Section 8 (a) (1) of the Act.

25.

The failure to find that the interrogation of Lela Beaver by Morris Scharff, as to how she ever got mixed up with the Union (I.R. p. 117, lines 19-21), violated Section 8 (a) (1) of the Act.

26.

The failure to find that Morris Scharff's interrogation of the employees named in the Union's letter of January 18, 1958[4] (I.R. p. 113, lines 13-28; p. 114, lines 1-7), violated Section 8 (a) (1) of the Act.

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[4]Hereinafter called simply the Union's letter.

27.

The failure to find that Morris Scharff's interrogation of Nellie Wood as to whether she knew that her name was in the Union's letter (I.R. p. 121, lines 7-12) violated Section 8 (a) (1) of the Act.

28.

The failure to find that Morris Scharff's interrogation of Nellie Wood as to whether she wanted her name to remain on the Union's letter (I.R. p. 121, lines 11-13) violated Section 8 (a) (1) of the Act.

29.

The failure to find that Morris Scharff's asking Nellie Wood if she knew the consequences of leaving her name on the Union's letter (I.R. p. 121, lines 12-14) was a threat of economic reprisal.

30.

The failure to find that the said threat of economic reprisal (Exception 29, *supra*) violated Section 8 (a) (1) of the Act.

31.

The failure to find that Morris Scharff's interrogation of Evelyn Hudson with respect to her name being in the Union's letter (I.R. p. 126, lines 15-19) violated Section 8 (a) (1) of the Act.

32.

The failure to find that Morris Scharff's question to Evelyn Hudson, "Do you realize, Evelyn, that this could work a hardship on you?" (I.R. p. 126, lines 19-21) constituted a threat of economic reprisal.

33.

The failure to find that the said threat of economic reprisal (Exception 32, *supra*) violated Section 8 (a) (1) of the Act.

34.

The failure to find that Morris Scharff's interrogation of Evelyn Hduson as to whether she wanted to leave her name on the Union's letter (I.R. p. 126, lines 22-23) violated Section 8 (a) (1) of the Act.

35.

The failure to find that Morris Scharff's interrogation of Violet Ewing regarding her authorization of the use of her name in the Union's letter (I.R. p. 128, lines 26-30) violated Section 8 (a) (1) of the Act.

36.

The failure to find that Morris Scharff's interrogation of Violet Ewing as to whether she "still wanted to go along with [the Union]" (I.R. p. 128, lines 30-32) violated Section 8 (a) (1) of the Act.

37.

The failure to find that Morris Scharff's interrogation of Frances Elizabeth Powell (nee' Johnson) with respect to the presence of her name in the Union's letter (I.R. p. 133, line 30; p. 134, lines 1-4) violated Section 8 (a) (1) of the Act.

38.

The failure to find that Morris Scharff's statement to Frances Elizabeth Powell (nee' Johnson), "Well, if that's the way you want it" in conjunction with his interrogation of her with respect to the Union's letter (I.R. p. 133, line 30; p. 134, lines 1-7) constituted a threat of economic reprisal.

39.

The failure to find that Morris Scharff's said threat of economic reprisal to Frances Elizabeth Powell (nee' Johnson) (Exception 38, *supra*) violated Section 8 (a) (1) of the Act.

40.

The failure to find that Morris Scharff's interrogation of Ida Harper about the use of her name in the Union's letter (I.R. p. 138, lines 10-14) violated Section 8 (a) (1) of the Act.

41.

The failure to find that Morris Scharff's interrogation of Ida Harper as to whether she wanted her name to remain on the Union's letter (I.R. p. 138, lines 11-17) violated Section 8 (a) (1) of the Act.

42.

The failure to find that Morris Scharff's statement to Ida Harper, after interrogating her about the Union's letter (Exceptions 40 and 41, *supra*), constituted a threat of economic reprisal.

43.

The failure to find that the said threat of economic reprisal by Morris Scharff to Ida Harper (Exception 42, *supra*) violated Section 8 (a) (1) of the Act.

44.

The failure to find that Morris Scharff's interrogation of Pauline McGee as to whether she had authorized the use of her name in the Union's letter (I.R. p. 144, lines 14-18) violated Section 8 (a) (1) of the Act.

45.

The failure to find that Morris Scharff's question to Pauline McGee, "Do you know what that means?" (I.R. p. 144, lines 14-20) constituted a threat of economic reprisal.

46.

The failure to find that the said threat of economic reprisal by Morris Scharff to Pauline McGee (Exception 45, *supra*) violated Section 8 (a) (1) of the Act.

47.

The failure to find that Morris Scharff interrogated Jeanette Beaver with respect to the Union's letter. (I.R. p. 114, lines 3-17.)

48.

The failure to find that the said interrogation of Jeanette Beaver by Morris Scharff (Exception 47, *supra*) violated Section 8 (a) (1) of the Act.

49.

The finding and the Conclusion of Law that General Counsel failed to sustain the burden of proof of the allegation of paragraph 21 of the complaint with respect to Respondent having induced and assisted employees to withdraw from the Union. (I.R. p. 82, lines 32-33; p. 83, lines 1-3; p. 158, lines 4-6.)

50.

The implied finding that the posting of Respondent's Exhibit 3 and General Counsel's Exhibit 9 and the address of the Union constituted the only evidence in support of the

allegation that Respondent induced and aided employees to withdraw from the Union. (I.R. p. 83, lines 1-6.)

51.

The finding that the record contained no evidence that agents of the Respondent assisted or suggested withdrawal from the Union. (I.R. p. 83, lines 6-10.)

52.

The recommendation to dismiss paragraph 21 of the complaint. (I.R. p. 83, lines 11-12.)

53.

The failure to find that Respondent induced and encouraged its employees to withdraw from and renounce the Union, and that it assisted them to so do.

54.

The failure to find that Respondent's inducement and encouragement of its employees to withdraw from and renounce the Union, and its assistance to them to do so (Exception 53, *supra*) violated Section 8 (a) (1) of the Act.

Signed at Atlanta, Georgia, this 18th day of June, 1959.

(Signed) A. C. JOY
A. C. Joy
Counsel for General Counsel

CERTIFICATE OF SERVICE

It is hereby certified that copies of the attached General Counsel's Exceptions to the Intermediate Report have on this day been duly served upon the following parties, by prepaid United States Certified Mail, at the addresses indicated:

Walton Manufacturing Company
Loganville, Georgia

Loganville Pants Company
Loganville, Georgia

(With copy by regular mail to:

Mr. Robert T. Thompson
615 Rhodes Haverty Building
Atlanta 3, Georgia)

Amalgamated Clothing Workers of America, AFL-CIO
15 Union Square
New York 3, N. Y.

(With copy by regular mail to

Mr. Jacob Sheinkman
c/o Amalgamated Clothing Workers
15 Union Square
New York 3, N. Y.).

(Signed) A. C. JOY
A. C. Joy
528 Peachtree-Seventh Building
Atlanta 23, Georgia

Dated at Atlanta, Georgia,
June 18, 1959.

CORRECTION TO GENERAL COUNSEL'S EXCEPTIONS TO INTERMEDIATE REPORT

(Number and Title Omitted)

The Exceptions to the Intermediate Report heretofore filed by General Counsel, mailed on June 18, 1959, are hereby corrected by adding the following inadvertently omitted paragraphs:

55.

The failure to find that Morris Scharff's interrogation of Bonnie Hamilton with respect to her name being in the Union's letter (I.R. p. 130, lines 18-25) violated Section 8 (a) (1) of the Act.

56.

The failure to find that Morris Scharff's interrogation of Nellie Hood with respect to her name being in the Union's

letter (I.R. p. 149 lines 27-33; p. 150, lines 1-2) violated Section 8 (a) (1) of the Act.

Dated at Atlanta, Georgia, this 22nd day of June, 1959.

(Signed) A. C. JOY
A. C. Joy
Counsel for General Counsel
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

CERTIFICATE OF SERVICE

It is hereby certified that copies of the attached Correction to General Counsel's Exceptions to the Intermediate Report have this day been duly served upon the following parties, by prepaid United States Certified Mail, at the addresses indicated:

Walton Manufacturing Company
Loganville, Georgia

Loganville Pants Company
Loganville, Georgia

(With copy by regular mail to:

Mr. Robert T. Thompson
615 Rhodes-Haverty Building
Atlanta 3, Georgia)

Amalgamated Clothing Workers of America, AFL-CIO
15 Union Square
New York 3, N. Y.

(With copy by regular mail to:

Mr. Jacob Sheinkman
c/o Amalgamated Clothing Workers
15 Union Square
New York 3, N. Y.)

(Signed) A. C. JOY
A. C. Joy
Counsel for General Counsel
National Labor Relations Board

Dated at Atlanta, Georgia,
June 22, 1959.

EXCEPTIONS TO THE INTERMEDIATE REPORT AND RECOMMENDED ORDER OF THE TRIAL EXAMINER, ON BEHALF OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA, THE CHARGING PARTY HEREIN

(Number and Title Omitted)

The following exceptions are hereby filed on behalf of the Amalgamated Clothing Workers of America (hereinafter referred to as the "Union") to the Intermediate Report and Recommended Order of the Trial Examiner in the above entitled matter dated May 15, 1959.

1. The Union excepts to so much of the Intermediate Report that accepts as substantially accurate the typed reproductions of the speeches made by Morris Scharff, which speeches were allegedly recorded on a dictaphone machine at the time they were made. (I.R. p. 70, lines 7-16)

2. The Union excepts to the refusal of the Trial Examiner in his Intermediate Report to credit General Counsel's witnesses' recollection and interpretation of the actual speeches given by Morris Scharff. (I.R. p. 69, lines 19-24; p. 70, lines 1-7)

3. The Union excepts to so much of the Intermediate Report that finds the speeches of Morris Scharff to

be protected free speech within the meaning of Section 8 (c) of the Act, except for the following:

> ". . . remember. I have no association with this Company, officially. I hope to have in the near future, but if you want a Union Shop, you are going to have it without me, because I have had my stomach full of Unions, because I can't take orders from New York. I can't take an order to be unfair to one person or another. I will have no part of it." (I.R. p. 71, lines 14-20)

(I.R. p. 69, lines 19-24; p. 70, lines 1-23; p. 71, lines 1-26)

4. The Union excepts to so much of the Intermediate Report as does not consider the additional incidents of interrogation engaged in by Morris Scharff and by Respondents' supervisors, Gerald Carter, Myrtle Ewing, Grace Higgins and Edna Atha. (I.R. p. 75, lines 18-27)

5. The Union excepts to so much of the Intermediate Report and Recommended Order that refuses to find that the Respondent induced and assisted its employees to withdraw from the Union as set forth in Paragraph 21 of the Complaint. (I.R. p. 80, lines 28-30; p. 81, lines 1-33; p. 82, lines 1-33; p. 83, lines 1-10)

Signed at New York, New York, this 26th day of June, 1959.

(Signed) JACOB SHEINKMAN
JACOB SHEINKMAN
Attorney for the Amalgamated
Clothing Workers of America
15 Union Square
New York 3, N. Y.

CERTIFICATE OF SERVICE

It is hereby certified that copies of the attached Amalgamated Clothing Workers of America's Exceptions to the Intermediate Report have this 26th day of June 1959 been duly served upon the following parties, by prepaid United States Certified Mail, at the addresses indicated:

A. C. Joy
Counsel for General Counsel
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

Mr. Robert T. Thompson
615 Rhodes-Haverty Building
Atlanta 3, Georgia

(With copy by regular mail to:

Walton Manufacturing Company
Loganville, Georgia

Loganville Pants Company
Loganville, Georgia)

(Signed) JACOB SHEINKMAN
Jacob Sheinkman
Attorney for the Amalgamated
Clothing Workers of America
15 Union Square
New York 3, N. Y.

Dated at New York, N. Y.
June 26, 1959.

RESPONDENTS' EXCEPTIONS TO INTERMEDIATE REPORT AND RECOMMENDED ORDER

(Number and Title Omitted)

Come now the Respondents, WALTON MANUFACTURING COMPANY and LOGANVILLE PANTS COMPANY, Respondents in the above-styled case and file these their Exceptions to the Intermediate Report and Recommended Order of the Trial Examiner as follows:

1.

Each and every finding of the interrelation between the operations of Respondents Walton and Loganville except as was expressly stipulated to by the parties.

2.

Each and every finding of the agency status of Morris Scharff with respect to Respondents except as was expressly stipulated to by the parties.

3.

The finding that,

> "Respondents promptly took measures to defeat the Union's organizational efforts. In the last week of November 1957, Respondents sent a letter to all their employees which set forth the benefits of employment with Respondents, announced new benefits, paid vacations and holidays, and stated that Respondents were also considering a pension plan for their employees (G. C. Exh. 7). The letter concluded with the statement, "no employee has to pay dues or initiation fees to any outside union — [or] outsiders for the privilege of working here." " (I.R. p. 65, l. 12-21.)

4.

The finding that,

> "was followed by Walton employee J. B. Stephens, driving in a 1957 green Plymouth car owned by Morris Scharff." (I.R. - p. 66, l. 6-8)

5.

The finding that,

> "that when she came out and proceeded to a second employee's home, she was followed by the same Plymouth car, about three car lengths behind her. When Broom arrived at the second employee's home, the Plymouth car also stopped a short distance from the employee's home." (IR — p. 66, l. 13-18)

6.

The finding that,

> "they again observed Stephens, parked and alone in the green Plymouth, watching them. That afternoon, Mrs. Broom's car was again followed by Stephens in the green Plymouth to her first call at an employee's home, but when she stopped, the Plymouth car continued on." (IR — p. 66, l. 33 and p. 67, l. 1-5)

7.

The finding that,

> "Stephens was not called by Respondents to testify regarding his reasons for following Mrs. Broom's car, and no explanation for his failure to testify was offered." (IR — p. 67, l. 22-25)

8.

The finding and conclusion that,

> "I am convinced that, notwithstanding the lack of direct evidence that Stephens was following Organizer Broom's car pursuant to Respondents' instructions, the circumstantial evidence warrants the conclusion that he did so on Respondents' behest, and I so find. I base this finding and conclusion on the following circumstances: (1) Stephens' day long use of Morris Scharff's car to follow Organizer Broom; (2) Stephens' report to Morris Scharff at the plant at midday (after his morning surveillance of Organizer Broom) that the organizers were at Breeze Inn; (3) Morris Scharff's visit to the restaurant accompanied by Stephens, allegedly to see the organizers; (4) Morris Scharff's evident interest in the license numbers of all the organizers' cars, shown by his notation of their license numbers and by the fact that the organizers' cars were pointed out to Scharff by Stephens; (5) Stephens' continued observation of the organizers at the restaurant and his following Organizer Broom in Morris Scharff's car directly after Scharff's visit to the restaurant; (6) Respondents' failure to call Stephens to testify and the absence of any explanation therefor; (7) the lack of any rational reason why Stephens, a janitor, would be so interested personally in the activities of the union organizers that he would spend practically an entire day in following one of them and in observ-

ing them; and (8) the admitted hostility of Respondents and Morris Scharff to the Union's organizational efforts." (IR - p. 67, l. 27-33 and p. 68, l. 1-19)

9.

The finding and conclusion that,

"I therefore find and conclude that by the aforedescribed conduct Respondents engaged in surveillance of the activities of the union organizers, and thereby interfered with, restrained and coerced their employees in the exercise of their rights to engage in concerted activity, in violation of Section 8 (a) (1) of the Act." (IR — p. 68, l. 19-23 and p. 69, l. 1-2)

10.

The finding that,

"I do not credit Scharff's inadequate explanations for Stephens' use of his car throughout the day, for his visit to Breeze Inn and for noting the license numbers of the organizers' cars, and I do not credit his denial that he authorized Stephens to follow the organizers." (IR — p. 68, l. 26-30)

11.

The finding that,

> "the fact that no employees were at the Breeze Inn to observe Scharff take down the license numbers of the organizers' cars and none observed the following of Broom's car by Stephens, is immaterial and does not detract from the violation." (IR — p. 69, l. 30-34)

12.

The finding that,

> "Morris Scharff made an antiunion speech to all of Walton's employees." (IR -- p. 69, l. 9-10)

13.

The finding that,

> "where Morris repeated the antiunion speech in the presence of his brother Arthur, Loganville Pants' treasurer, and Mr. Hughley, the plant superintendent." (IR — p. 69, l. 12-15)

14.

The finding that,

> "One week later, on December 10, 1957, Morris Scharff made a second antiunion speech on com-

pany time to the employees at the Walton plant, and later that same day, made a similar speech to the Loganville Pants employees." (IR - p. 69, l. 15-18)

15.

The finding that,

"The speech then continued with a harangue against the Union, including an appeal to sectional prejudice based on the northern origin of the Union and an appeal to class prejudice based on the "millions of dollars" accumulated by the Union through dues, initiation fees and assessments which "comes out of the pockets of the worker who is trying to put bread and milk on the table." " (IR — p. 71, l. 5-11)

16.

The finding that,

"That is not to say that I regard Morris Scharff as a truthful witness," (IR — p. 70, l. 35-36)

17.

The finding that,

"This statement is, of course, completely inconsistent with Morris Scharff's previously stated lack

of official connection with Walton. Indeed, the speech is replete with references showing Morris' supervision of the plant and the knowledge thereof by Respondents' employees; e. g., the reference to the request made to Morris by employees for permission to wear slacks, shorts or low cut dresses during the summer; his illustration that if the employees' and his positions were reversed and the employees were "my foreman and my boss"; and his control of the terms of repayment of loans made by Respondents to employees." (I.R. — p. 71, l. 28-37)

18.

The finding and conclusion that,

"that statement conveyed a threat to the economic security of Respondents' employees if the Union became their representative." (IR — p. 72, l. 4-6)

19.

The finding that,

"I base this conclusion on the fact that the threat not to associate" (IR — p. 72, l. 6-7)

20.

The finding that,

"Respondents' employees could, as many of them

apparently did, reasonably interpret that statement as the equivalent of a threat to shut down the plant rather than deal with the Union." (IR — p. 72, l. 14-17)

21.

The finding that,

"but merely that he (Morris Scharff) would no longer be associated with the business if the Union came in. The statement, coming as it did from Respondents' principal operating official, constituted a threat to the economic security of Respondents' employees and violated Section 8 (a) (1) of the Act." (IR — p. 72, l. 24-29 and p. 73, l. 1)

22.

The ruling that,

"I do not credit Morris' explanations for his interrogation of Grace McCart." (IR — p. 74, l. 9-10)

23.

The ruling that,

"the admitted inquiry tends to confirm McCart's belief that her discharge was motivated by her attendance at the union meeting. Moreover, on the entire record, I do not regard Morris Scharff as a truthful or reliable witness." (IR — p. 74, l. 13-17)

24.

The finding that,

> "By stating that he knew who had attended the meeting, Scharff gave Grace McCart the impression that Respondents had engaged in surveillance of the meeting." (IR — p. 75, l. 1-3)

25.

The finding that,

> "In the context of Respondents' admitted hostility to the Union and Morris Scharff's antiunion speeches, by Scharff's interrogation of Grace McCart regarding her attendance at the union meeting and the identity of the employee who had solicited her attendance and of others who attended, Respondents engaged in restraint and coercion of employees in the exercise of their rights under the Act." (IR — p. 75, l. 9-15)

26.

The finding that,

> "My lack of regard for the veracity of Morris Scharff as a witness is based on, *inter alia*: (1) his testimony that on the date of the discharge of Pearl Coker (January 15, 1958), he did not know whether or not she belonged to the Union, when in fact, only the day before he had interrogated Grace Mc-

Cart regarding Coker's attendance at the January 9 meeting, and in connection therewith, admitted it was common knowledge that Coker was 1 of 3 employees who were "heavily pro-union"; (2) his implausible testimony regarding the use of his car for surveillance of union organizers and for taking down the license numbers of their cars; (3) his testimony, which I do not credit, that he had no official connection with Respondents until June 1957, when in fact he moved to Atlanta from New York in April 1957; (4) his speech to employees that he had no official connection with Respondents whereas the record shows that he was their principal operating official; (5) his implausible testimony that operators who never worked on high speed sewing machines are more easily trained than persons who have operated such machines; and (6) his testimony, which I cannot believe, that Respondents' employees asked him after his antiunion speech whether he was for or against the Union." (IR — p. 74, l. 20-40)

27.

The finding that,

"In view of my finding that by the aforementioned interrogation and statements of Morris Scharff, Respondents engaged in unfair labor practices in violation of Section 8 (a) (1) of the Act." (IR — p. 75, l. 18-21)

28.

The finding that,

> "the additional incidents of interrogation allegedly engaged in by Morris Scharff and by Respondents' Supervisors Gerald Carter, Myrtle Ewing, Grace Higgins and Edna Atha" (IR — p. 75, l. 22-25)

29.

The finding that,

> "that they [the Scharffs] would close their plant down before they would work union labor." (IR — p. 76, l. 8-10)

30.

The ruling that,

> "Since I do not regard Grace Higgins as a credible witness and the threat to close down the plant rather than work with union labor is consistent with the implications of Morris Scharff's speech in which he threatened that he would not associate with Respondents if th Union came in, I credit the testimony of Pearl Coker that Higgins made the statement attributed to her by Coker." (IR — p. 76, l. 13-19)

31.

The finding that,

> "if you don't want to dig your own grave, you had better shut up talking about the Union." (IR — p. 77, l. 1-2)

32.

The finding that,

> "Morris [Scharff] said he didn't care how good an operator a girl was, or who she was, that he would fire her if he found out she had joined the Union." (IR — p. 77, l. 9-11)

33.

The ruling that,

> "I resolve these conflicts in the testimony against Respondents because: (1) I credit the testimony of employee McGee and Violet Ewing; (2) the statements attributed to Supervisor Ewing are consistent with Respondents' antiunion attitude and as hereinafter found, with the subsequent discharge of employees because of their union adherence; and (3) I do not regard Supervisor Myrtle Ewing as a credible witness." (IR — p. 77, l. 26-31 and p. 78, l. 1-2)

34.

The finding that,

> "that Higgins' testimony is untrustworthy upon the entire record, including: (1) her demeanor as a witness; (2) her testimony that she heard Morris Scharff make a speech in the plant and yet did not know that Morris Scharff was against the Union; (3) her incredible testimony that the speech was primarily "not about the union"; (4) her testimony, that she never discussed the Union with her supervisors, which was contradicted by the testimony of both Superintendent Prosterman and Morris Scharff, whom I credit in this respect; and (5) her testimony that she was out sick when Francis Elizabeth Johnson was laid off, but was present when Evelyn Hudson was laid off, both layoffs having occurred on the same day and time." (IR — p. 76, l. 26-37)

35.

The finding and conclusion that,

> "I find and conclude that by the above statements made by Supervisors Grace Higgins and Myrtle Ewing to the employees Pearl Coker, Pauline McGee and Violet Ewing, Respondent Walton engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act." (IR — p. 78, l. 4-8)

36.

The conclusion that,

> "I base my conclusion on the unreliability of the testimony of Supervisor Myrtle Ewing on various considerations, including, but not limited to: (1) the improbability of her telling Pauline McGee that she was digging her own grave and uncooperative merely because on this one occasion, Pauline McGee was not at her machine to resume work when the bell rang, although admittedly she was enroute to her machine; (2) the implausibility of Supervisor Ewing's testimony, which in fact was contradicted by both Superintendent Prosterman and Morris Scharff, that she had never received instructions not to discuss the Union with employees; (3) her likewise implausible testimony that she neither received instructions from nor consulted with Morris Scharff, whom I have already found to be the principal official of Respondents in respect to production (Myrtle Ewing's testimony was given before Respondents conceded Morris Scharff's agency and before he testified that he supervised Walton); and (4) her testimony that she began preparing for the layoff in December, when according to Superintendent Prosterman and Morris Scharff, they did not notify the supervisors about the layoff until the middle of January." (IR — p. 78, l. 22-41)

37.

The finding that,

> "The uncontradicted evidence discloses that the prohibition of union talk in the plant was not limited to working time". (IR — p. 80, l. 7-9)

38.

The finding that,

> "I find that by the announcement of such prohibition by Superintendent Hughley, Respondent Loganville Pants interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby violated Section 8 (a) (1) of the Act." (IR — p. 80, l. 10-14)

39.

The finding that,

> "the argument in the plant described above did not warrant Hughley's threat to cease trying to get work o contracts for the plant, and that threat clearly restrained and coerced and interfered with the employees' rights to engage in concerted activities. *B & Z Hosiery Products Co.*, 85 NLRB 633, 634. Accordingly, I find that by such threat, Respondent Loganville Pants engaged in unfair

labor practices within the meaning of Section 8 (a) (1) of the Act." (IR — p. 80, l. 16-23)

40.

The finding that,

"According to her uncontradicted testimony, Mrs. Yancey was told by her supervisor, Grace Higgins, that her work had improved, that the Company was pressing for more production, but that "they [the Company] won't have to worry about you." " (IR — p. 83, l. 25-29)

41.

The finding that,

"that he could not put her back to work, but if the Union did not get in, he would reinstate her." (IR — p. 85, l. 8-10)

42.

The ruling that,

"I infer that Lucille Yancey worked on at least 200 to 250 garments, which meant that Yancey's defects, according to this witness' testimony, would be 1 or 2 a day out of at least 200 to 250. Accordingly, I do not credit Mrs. Meeks' testi-

mony either in respect to the alleged arguments between Supervisor Higgins and Mrs. Yancey, or in respect to arguments between the latter and Odelle Barnes and Mrs. Meeks." (IR — p. 89, l. 34-37 and p. 90, l. 32-35)

43.

The finding that,

"My analysis of the reasons assigned by Respondents for her discharge do not persuade me of their validity." (IR — p. 92, l. 8-10)

44.

The finding that,

"The alleged failure of Lucille Yancey to make production is belied by her payroll record (G. C. Exh. 29) which showed her makeup pay was not a regular occurrence, contrary to Prosterman's testimony that she "never" made production." (IR — p. 92, l. 12-15)

45.

The finding that,

"I am persuaded that to the extent she had makeup pay, it was attributable to insufficient work to keep her occupied full time. Accordingly, I do not

believe Respondents' assertion that failure to make production was one of the reasons she was discharged." (IR - p. 92, l. 21-25)

46.

The finding that,

"I do not place any credence in Respondents' testimony regarding Lucille Yancey's alleged uncooperative and unruly behavior." (IR — p. 92, l. 27-29.)

47.

The finding that,

"I cannot perceive how the request therefor demonstrated either lack of cooperation or unruliness." (IR — p. 93, l. 5-7)

48.

The finding that,

"As to the machine, the complaints, if made were apparently well founded." (IR — p. 93, l. 9-11)

49.

The finding that,

"As to the "fussing" at other girls, Mrs. Higgins'

testimony was not corroborated by any of the employee witnesses called by Respondents and I do not credit Mrs. Higgins in this respect." (IR — p. 93, l. 13-16)

50.

The finding that,

"I also do not credit Higgins' testimony that she instructed Yancey on how to do her work properly and that Yancey resented and refused to take such instructions. Since I do not believe Respondents' testimony that Lucille Yancey was "uncooperative" or "unruly," I also do not believe that that was one of the reasons for her discharge." (IR — p. 93, l. 18-23)

51.

The finding that,

"There was nothing either in the testimony of Mrs. Yancey or in her demeanor while testifying which causes me to believe that she was other than a credible witness and I credit her testimony in this regard. Conversely, I disbelieve the testimony of Supervisor Higgins and Morris Scharff that Mrs. Yancey was frequently, if not daily, reprimanded about her work." (IR — p. 94, l. 8-14)

52.

The finding that,

> "As to the witness, Plant Superintendent Prosterman, I likewise do not credit his testimony that he reprimanded Mrs. Yancey for bad work, nor his uncorroborated testimony that she grumbled and complained constantly to fellow employees." (IR — p. 94, l. 17-21)

53.

The finding that,

> "once or twice a day out of approximately 250 garments, she mismatched the proper facing and lining and sewed the darts on the wrong side of the lining." (IR — p. 95, l. 1-4)

54.

The finding that,

> "I am not persuaded that Yancey's errors of this type were more than those of other employees who have performed this operation." (IR — p. 95, l. 5-7)

55.

The finding that,

> "The only testimony regarding Yancey's alleged failure to distribute fullness properly was that of Prosterman and Higgins[31] whom I generally discredit" (IR — p. 95, l. 12-14)

56.

The finding that,

> "I am not persuaded that it was due to any lack of ability on the part of Mrs. Yancey but rather to the skimpy cut of the lining which she admittedly and frequently called to the attention of her supervisor." (IR — p. 95, l. 15-19)

57.

The finding that,

> "I found Prosterman's testimony with respect to Morris Scharff's alleged lack of official connection with the Company to be wholly untrustworthy." (IR — p. 94, l. 27-29)

58.

The finding that,

> "as aforestated Prosterman's testimony that Mrs. Yancey never made production was shown to be false by her payroll record." (IR — p. 94, l. 37-39)

59.

The finding that,

> "I do not believe Respondents' testimony that Mrs. Yancey was discharged because of her incompetency." (IR — p. 95, l. 24-25)

60.

The finding that,

> "this alleged reason for her termination is likewise without substance." (IR — p. 96, l. 7-8)

61.

The finding that,

> "I discredit and reject the reasons asserted by Respondents for her discharge on December 4, 1957." (IR — p. 96, l. 13-15)

62.

The finding that,

"I have discredited the reasons asserted by Respondents for Mrs. Yancey's discharge," (IR - p. 96, l. 17-18)

63.

The finding that,

"Respondents in an effort to counteract the Union's organizing efforts, engaged in acts of interference, restraint and coercion of employees in violation of Section 8 (a) (1) of the Act." (IR - p. 96, l. 25-28)

64.

The finding that,

"just 4 days before the discharge of Mrs. Yancey, agents of Respondent, including Morris Scharff and J. B. Stevens had engaged in surveillance of the union organizers." (IR — p. 96, l. 29-32)

65.

The finding that,

"on the day before Mrs. Yancey's discharge, Morris Scharff had made an antiunion speech in the plant,

including therein a statement which I have found to be the equivalent of a threat to close the plant if the Union came in, or at least a threat to the economic security of Respondents' employees." (IR - p. 96, l. 32-33 and p. 97, l. 1-4)

66.

The finding that,

"on the basis of Respondents' surveillance of the activities of the union organizers on November 30, 1957, there is sufficient evidence for me to infer that Mrs. Yancey was known or believed by Respondent Walton to be an active union adherent." (IR — p. 97, l. 9-13)

67.

The finding that,

"I credit Mrs. Yancey's testimony that in her conversation with Morris, the latter questioned her regarding her husband's status as a paid official of the Railway Clerks' Union and told Yancey that he had been informed that she and her husband were assisting the union organizers and that she would be rehired if the Union did not get in." (IR — p. 97, l. 14-20)

68.

The finding that,

> "Yancey's discharge for her union adherence is consistent with the threat repeated by Supervisor Ewing to employee Myrtle Ewing, that regardless of competence, Morris Scharff would fire any employee if he found out she joined the Union. Accordingly, on the record before me, I am satisfied that Mrs. Yancey was discharged on December 4, 1957, because of her activity on behalf of the Union. By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Lucille Yancey thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act." (IR — p. 97, l. 20 and p. 98, l. 1-10)

69.

The finding that,

> "it is beyond my comprehension that if, as testified by Morris Scharff, Supervisor Grace Higgins had threatened to quit and was "crying" because of her inability to get along with Mrs. Yancey, he would not have done so forthwith instead of 10 days thereafter, especially since Yancey was allegedly, such a poor employee." (IR — p. 95, l. 30-35)

70.

The finding that,

"Morris Scharff's version of these conversations is not credited by me." (IR — p. 97, l. 22-23)

71.

The finding that,

"Aside from my general disbelief in his veracity" (IR — p. 97, l. 23-24)

72.

The finding that,

"I have the following reasons for not crediting Morris Scharff's version of these conversations." (IR — p. 97, l. 25-27)

73.

The finding that,

"Mrs. McCart credibly testified that before that day, neither Myrtle Ewing, Prosterman nor any other supervisor, had told her that her work was bad." (IR — p. 99, l. 13-16)

74.

The finding that,

> "I credit Grace McCart's and Rose Tribele's testimony that it was Prosterman who did so. There would be no reason for Mrs. McCart or for the witness, Rose Tribele to testify that Mrs. McCart had been discharged by Prosterman rather than Supervisor Ewing since, if the discharge was illegal, Walton would be equally responsible regardless of which of them did so." (IR — p. 99, l. 27-33)

75.

The finding that,

> "On the other hand, I have already, in connection with other aspects of this case had reason to disbelieve testimony given by both Prosterman and Supervisor Ewing." (IR — p. 99, l. 36-39)

76.

The finding that,

> "Interrogation of Employees by Morris Scharff." (IR - p. 99, l. 21 and p. 100, l. 1)

77.

The finding that,

> "and Scharff, in reply, inquired, whether she had attended the union meeting on January 9, asked who was at the meeting, who had accompanied McCart to the meeting, and whether Ruth Brooks, Pearl Coker and Jeanette Beaver had attended. When McCart refused to divulge the names, Morris Scharff said that he knew everyone who attended the union meeting, anyway, and that Brooks, Coker and Beaver "were heavily prounion and active in the organization attempt." " (IR - p. 100, l. 3-11)

78.

The finding that,

> "I do not believe the testimony of Prosterman, Ewing or Scharff, regarding their reasons for McCart's discharge for the following reasons:" (IR — p. 100, l. 21-23)

79.

The finding that,

> "Prosterman's attempted explanation for this, that her machine was a difficult one to operate and he had no replacement for her, is likewise not believable." (IR — p. 101, l. 7-9)

80.

The finding that,

"Thus, a replacement for McCart was available, contrary to Prosterman's testimony." (IR — p. 101, l. 15-16)

81.

The finding that,

"that "declining" quality is inconsistent with Prosterman's testimony regarding McCart's "continuous" history of poor quality," (IR — p. 101, l. 26-28)

82.

The finding that,

"Scharff substantially admitted this interrogation of Grace McCart and I have not credited his explanation that he was attempting to reassure McCart that her union membership and attendance at a union meeting were not the reasons for her discharge." (IR - p. 100, l. 31-35)

83.

The finding that,

"the testimony regarding McCart's continuous poor work cannot be accepted by me." (IR — p. 102, l. 1-2)

84.

The finding that,

> "including Respondents' admitted hostility to the Union, Morris Scharff's professed knowledge of all who attended the union meeting of January 9, 1958, his interrogation of McCart regarding her attendance and the attendance of others at that meeting, McCart's discharge on the day following the meeting, and my disbelief of the reasons assigned by Respondent Walton for her discharge, and its consistency with the threat repeated by Supervisor Ewing that Morris Scharff would fire any employee who joined the Union, I find and conclude that Respondent Walton had knowledge of McCart's attendance at the union meeting at the time of her discharge and discharged her because of that fact. By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Grace McCart, thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act." (IR — p. 102, l. 10-26)

85.

The finding that,

> "According to Coker's credited testimony, she was never told prior to her discharge that she was not doing enough work." (IR — p. 103, l. 17-19)

86.

The finding that,

> "Their testimony regarding the quantity of such defective work was extremely vague" (IR — p. 102, l. 30-31)

87.

The finding that,

> "the discovery of such defects is consistent with the uncontradicted testimony of Grace McCart regarding the malfunctioning of her machine and thus, does not establish alleged poor quality." (IR — p. 102, l. 33-36)

88.

The finding that,

> "Supervisor Higgins' testimony in respect to the unsatisfactory quality of Pearl Coker's work was contradicted by both Plant Superintendent Prosterman and Morris Scharff, both of whom testified on the subject of Pearl Coker's discharge." (IR - p. 104, l. 22-26)

89.

The finding that,

> "I do not credit the testimony of Grace Higgins in respect to the alleged poor quality of Pearl Coker's work." (IR — p. 105, l. 1-3)

90.

The finding that,

> "I likewise do not credit Respondents' testimony that Pearl Coker was discharged because she did not produce a sufficient quantity of work." (IR - p. 105, l. 5-7)

91.

The finding that,

> "According to the credited testimony of Hester Lou McCart" (IR — p. 105, l. 7-8)

92.

The finding that,

> "I am not persuaded that Pearl Coker's lack of productive capacity was the real reason for the sudden decision to discharge her in the middle of a workweek." (IR — p. 105, l. 25-28)

93.

The finding that,

"Nor am I persuaded of the veracity of Respondents' explanation for their decision to discharge Pearl Coker on January 15 rather than on January 31, when other employees were terminated because of the cutback in production." (IR — p. 106, l. 1-5)

94.

The finding that,

"The attempted explanation is, in my opinion, no explanation for Coker's precipitous discharge in the middle of a workweek, 2½ weeks before her replacement was actually available" (IR — p. 106, l. 13-16)

95.

The finding that,

"Alleged threats by Supervisors Grace Higgins and Myrtle Ewing," I have set forth additional reasons for doubting her Higgins' veracity." (IR — p. 105, l. 32-34)

96.

The conclusion that,

> "the real reason for Coker's sudden discharge obviously lies elsewhere." (IR — p. 106, l. 18-19)

97.

The finding that,

> "According to her credited testimony" (IR — p. 106, l. 21)

98.

The finding that,

> "that she did not know who in the plant would want a union and further stated that at their supervisory meeting, the Scharffs had said that they would close their doors down before they would work with union labor. Morris Scharff, who was admittedly opposed to the Union, had on December 3, 1957, told Respondents' employees in a speech, that if they wanted a union, they could have it without him. Scharff testified that at the time of Coker's discharge, he did not know that Pearl Coker was a member of the union. This testimony directly contradicted that given by him in connection with the discharge of Grace McCart,

in which he admitted that on January 14, 1958, the day before Coker's discharge, he had asked Grace McCart whether Pearl Coker had attended the union meeting of January 9 and testified that his reason for doing so was that it was common knowledge that Pearl Coker was one of the employees who were heavily prounion and active in the Union's organizational attempt. In view of this apparent Freudian slip, I am unable to credit Morris Scharff's denial of knowledge of Coker's union adherence and activity nor do I believe his assertions of the reasons for Pearl Coker's discharge." (IR — p. 106, l. 26-33 and p. 107, l. 1-16)

99.

The finding that,

"I am convinced and find [illegible] the reasons asserted for Pearl Coker's discnarge on January 15, 1958, were a pretext and that the real reason therefor was her union adherence and support. Accordingly, I find and conclude that the discharge of Pearl Coker on January 15, 1958, was motivated by Respondent's antiunion animus in an effort to thwart the Union's organizing efforts in the plant with knowledge of the fact that she was "heavily prounion and active in the organization attempt." By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Pearl Coker thereby discouraging membership in

the Union in violation of Section 8 (a) (1) and (1) of the Act." (IR — p. 107, l. 18-30)

100.

The finding that,

" " Morris [Scharff] made me do it." " (IR — p. 109 l. 24)

101.

The finding that,

"Well you girls are paying too much attention to this guy that came down from the North giving you the piece rates on your job and we cannot afford to pay those rates that they pay us there." (IR — p. 109, l. 26-30)

102.

The finding that,

"He made me do it." (IR — p. 110, 1. 23)

103.

The finding that,

" "this guy that came down from the North" was apparently a reference to either Union Organizer

Milton Eiger who is from New York City or to the New York City address of the Union's International headquarters." (IR - p. 109, l. 32-34)

104.

The finding that,

"I do not credit Morris Scharff's testimony that the decision to discharge Mrs. Brooks was made by Hughley because: (1) contrary it is to Scharff's testimony that he, not Hughley, made the decisions for the pants plant; (2) I do not regard Scharff as a reliable witness; and (3) Hughley was not called to deny Brooks' testimony that Hughley discharged her because "Morris made me do it." (IR — p. 110, l. 30-33 & p. 111, l. 1-3)

105.

The finding and conclusion that,

"I therefore do not believe that Ruth Brooks was discharged in connection with a reduction in force by Respondent Loganville Pants." (IR — p. 111, l. 14-16)

106.

The finding that,

> "Furthermore, the discharge of Ruth Brooks for "insufficient quantity of work produced,"[42] is inconsistent with Ruth Brooks' undenied and credited testimony that Hughley regarded her as a satisfactory employee, notwithstanding her make-up pay." (IR — p. 111, l. 20-24)

107.

The finding that,

> "I do not credit any of the reasons assigned by Respondent Loganville Pants for Brooks' discharge." (IR — p. 112, l. 1-3)

108.

The ruling that,

> "The true motivation for Ruth Brooks' discharge must, therefore, be sought elsewhere." (IR — p. 112, l. 5-6)

109.

The finding that,

> "interrogated McCart regarding her attendance at the union meeting on January 9," (IR — p. 112, l. 14-15)

110.

The finding and Conclusion that,

> "I find that all three of these firings were part of a pattern of antiunion conduct on the part of Respondents to resist and defeat the union organizational efforts by eliminating from their payroll their prounion employees. By such conduct Respondents discriminated in respect to hire and tenure of employment of Ruth Brooks, thereby discouraging membership in the Union, in violation of Section 8 (a) (3) and (1) of the Act." (IR — p. 112, l. 24-31)

111.

The finding that,

> "and apparently in an effort to discourage further discrimination against its adherents." (IR — p. 113, l. 13-14)

112.

The finding that,

> "Morris Scharff interrogated each of the employees in the coat plant named therein." (IR — p. 114, l. 5-6)

113.

The finding that,

> "I do not credit this explanation since the record does not establish that any of the others had either seen or signed the letter." (IR — p. 114, l. 17-19)

114.

The finding that,

> "I do not credit this explanation for the retention of Alice Lowe rather than Lela Beaver, since Beaver regularly performed two operations, setting flies and turning corners, and also performed other operations when she was ahead on her production." (IR — p. 117, l. 33 & p. 118, l. 1-4)

115.

The finding that,

> "there was no reason for selecting Beaver rather than Lowe for layoff on the basis of quantity of production." (IR — p. 118, l. 20-22)

116.

The finding that,

> "I find Scharff's testimony unworthy of belief for a number of reasons. In the first place, as aforestated, Beaver regularly performed two operations, setting flies and turning corners, and when caught up with her work, which was frequently, she was put on other operations. Secondly, Morris Scharff's alleged knowledge of Lela Beaver's work and his opinion regarding her lack of capability to perform two operations, must have been acquired, if at all, long after Lela Beaver's termination by Respondents" (IR — p. 119, l. 5-13)

117.

The finding that,

> "I do not believe that Scharff had any personal knowledge of Lela Beaver's work either at the time of her discharge or when he testified at the hearing." (IR — p. 119, l. 26-28)

118.

The finding that,

> "that the reasons assigned by Scharff for the non-retention of Lela Beaver were advanced to conceal the true reason therefor.[51] My conclusion in this respect is also based on the fact, that on the record herein, Lela Beaver was at least equal to Alice Lowe in quality, production and versatility, and, therefore, on Respondents' own alleged standards for selection, Lela Beaver would have been retained on the basis of her greater seniority." (IR — p. 119, l. 33 & p. 120, l. 1-8)

119.

The finding that,

> "Wood was clearly a more versatile operator than both Starrett and Bowen." (IR — p. 122, l. 2-4)

120.

The finding that,

> "Wood was also superior to Starrett in productive capacity." (IR — p. 122, l. 9)

121.

The finding that,

> "Wood should have been retained over both Bowen and Starrett." (IR — p. 122, l. 14-15)

122.

The finding that,

> "I do not credit Prosterman's testimony regarding the reason for Wood's selection for termination." (IR — p. 122, l. 20-22)

123.

The finding that,

> "Thus in respect to the quality of Wood's work, Ewing's testimony contradicts Prosterman. I do not credit her testimony in this respect." (IR — p. 122, l. 29-31)

124.

The finding that,

> "Scharff's letter bases Wood's layoff on lack of quality and thereby contradicts his testimony that her work was not so bad as to require her layoff for that reason." (IR — p. 123, l. 13-16)

125.

The finding that,

> "Scharff's testimony contradicts Prosterman's testimony regarding the satisfactory quality of Wood's work." (IR — p. 123, l. 16-18)

126.

The finding that,

> "Scharff's testimony is inconsistent with the raise which he admittedly gave Wood. Accordingly, I do not credit Scharff's testimony regarding his reasons for the selection of Nellie Wood for termination." (IR — p. 123, l. 21-24)

127.

The finding that,

> "In view of the shifting and contradictory reasons asserted by Respondent Walton for Wood's termination, further consideration of the record is required to ascertain the real motivation therefor." (IR — p. 123, l. 26-29)

128.

The finding that,

> "Ewing falsely promised[54] to speak to Morris Scharff" (IR — p. 124, l. 2-3)

129.

The finding that,

> "Ewing admitted she had no intention of requesting Wood's reinstatement for reasons which I do not credit." (IR — p. 124, l. 29-30)

130.

The finding that,

> "I do not credit the shifting and contradictory reasons asserted by Respondent Walton for Mrs. Wood's selection for termination on January 31, 1958, and I find and conclude, notwithstanding Respondent Walton's denial, that Wood was rehired on June 21, 1958, because she renounced the Union and requested the withdrawal of "her charge" against Walton." (IR — p. 125, l. 10-16)

131.

The conclusion that,

> "It was quite evident to me that Mrs. Wood believed that she could not remain an employee of Walton and a Union supporter at the same time and that she was most reluctant to testify against Respondents. The tears that flowed from her eyes as she testified, in my opinion, were induced by fear that Respondents would again regard her as pro-union and take reprisal against her for testifying. Since she was one of the most active of the Union's workers, I do not credit her testimony quoted above, that she was sorry from the start that she joined the Union, because it was obviously inspired by fear of reprisal." (IR — p. 125, l. 27-32)

132.

The finding that,

> "The implication of this testimony, that it would be necessary to train Evelyn Hudson in the operations performed by Grace Barnes and Bonnie Thompson, overlooks the fact that Hudson had and could perform the operations of both. Accordingly, I do not credit it." (IR — p. 127, l. 13-17)

133.

The finding that,

> "since Grace Barnes and Bonnie Thompson performed only one operation each, the decision to retain them rather than Hudson, notwithstanding the latter's greater versatility, is contrary to the standards allegedly applied by Respondent Walton in selecting employees for retention.[59] In view of the foregoing, I do not cr it the reasons assigned by Respondent Walton for Hudson's selection for layoff." (IR — p. 127, l. 18-24)

134.

The finding that,

> "I do not credit Higgins' testimony which implies that Evelyn Hudson was laid off because of insufficient production." (IR — p. 127, l. 26-27)

135.

The finding and conclusion that,

> "In view of Respondent Walton's failure to explain why it did not consider and compare Ewing fc. retention with Madeline, Prosterman's reason for retaining Britt, an employee with lesser seniority than Ewing, does not persuade me that that was the reason for Ewing's selection for layoff." (IR — p. 129, l. 16-21)

136.

The finding and conclusion that,

> "Because of the foregoing and my general lack of faith in the credibility of Prosterman to which I have heretofore adverted, I do not credit Respondent Walton's reasons for selecting Ewing, an experienced, senior and competent operator, for layoff." (IR — p. 129, l. 28-32)

137.

The finding that,

> "Since there is no question about Respondent Walton's knowledge of the union activities of the employees involved in the layoff who are alleged as discriminatees herein." (IR — p. 130, l. 30-31)

138.

The finding that,

> "The implication of this credited testimony is that Hamilton's work was better in quality than Yancey's and that the latter was not as cooperative as Hamilton in the matter of doing repair work." (IR-p. 131, l. 15-19)

139.

The finding that,

> "I do not credit Respondent's wholly subjective testimony regarding the reasons for selecting Bonnie Hamilton for layoff. The testimony regarding the degree in which Yancey's work was allegedly better was inconsistent, varying from Prosterman's "greater potential" and Carter's "a little better" to the statement in Scharff's letter, "much better." (IR — p. 132, l. 12-18)

140.

The finding that,

> "This lack of consistency and shifting of reasons for Hamilton's layoff merely confirms my general disbelief in the credibility of Respondent's witnesses. The uncontradicted and credited testimony of Floorworker Nellie Hood persuades me that Yancey's work was not better than Hamilton's." (IR — p. 132, l. 21-26)

141.

The finding and conclusion that,

> "I am impelled to the conclusion to disbelieve the reason asserted by Respondent for Hamilton's selection for layoff, because of the failure of Respond-

ent to compare Hamilton with other employees in the plant whose operations she occasionally performed since Respondent admittedly considered all employees in the plant in the filling of vacancies.[62] And finally, I am led to this conclusion by Respondent's failure to consider Hamilton's greater seniority." (IR - p. 133, l. 2-10)

142.

The finding that,

"His testimony in respect to the number of employees in the lining section was subsequently contradicted both by his own later testimony and by his layoff report" (IR - p. 134, l. 17-20)

143.

The finding that,

"Prosterman further testified that Johnson had makeup pay, which I likewise do not credit" (IR- p. 134, l. 22-23)

144.

The finding that,

"I do not credit Prosterman's testimony regarding the quality of Johnson's work." (IR - p. 135, l. 16-18)

145.

The finding that,

> "I do not credit Higgins regarding the poor quality or quantity of Johnson's work.[63]" (IR - p. 135, l. 29-30)

146.

The finding that,

> "I have, in prior sections of this report, indicated my lack of faith in the reliability of Higgins' testimony." (IR - p. 135, l. 32-33)

147.

The finding that,

> "Scharff's testimony contradicts both Prosterman and Higgins regarding the quality of Johnson's work. But even Scharff's testimony regarding the reason of Johnson's selection for layoff is unreliable and I do not credit it." (IR - p. 136, l. 7-11)

148.

The finding that,

> "This directly contradicts his testimony that Johnson was coming along fairly well with her training." (IR - p. 136, l. 14-15)

149.

The finding that,

> "An additional reason exists for my disbelief of the reasons assigned by Respondent Walton for Johnson's selection for layoff." (IR - p. 136, l. 17-19)

150.

The finding that,

> "I do not believe Respondent Walton's reason for Johnson's selection for layoff." (IR - p. 137, l. 4-5)

151.

The finding that,

> "to which I credit Harper's uncontradicted testimony." (IR - p. 139, l. 13-14)

152.

The finding that,

> "This, of course, corroborates Harper's testimony regarding lack of sufficient work to keep her occupied full time and explains her makeup pay." (IR - p. 139, l. 20-22)

153.

The finding that,

"I do not believe Prosterman's testimony that inability to produce sufficiently or makeup pay was a reason for Harper's selection for termination." (IR - p. 139, l. 25-28)

154.

The finding that,

"I do not credit Prosterman's testimony that absenteeism was a reason for Harper's selection for termination." (IR - p. 140, l. 8-10)

155.

The finding that,

"I do not believe either that Harper was requested to increase her production on Prosterman's vague testimony regarding her "poor general attitude." (IR - p. 140, l. 20-22)

156.

The finding that,

"Since none of the other reasons (that she played around, spent a lot of time in the washroom and

talked excessively) were alluded to in Prosterman's report to Scharff in preparation for the layoff, I do not believe that these were the reasons for her layoff and I do not credit them." (IR - p. 140, l. 24-26 and p. 141, l. 1-2)

157.

The finding that,

"I do not credit Myrtle Ewing's testimony in any respect in which it conflicts with that of Ida Harper. (IR - p. 141, l. 12-13)

158.

The finding that,

"I do not credit Ewing's testimony that Harper's alleged "bad work" was a reason for Harper's selection for layoff." (IR - p. 141, l. 21-23)

159.

The finding that,

"I do not credit Ewing's testimony that she spoke to Harper daily about her bad work or lack of work.[88] Accordingly, I do not credit Ewing's testimony regarding the records for Harper's termination." (IR-p. 142, l. 4-7)

160.

The finding that,

> "His explanation, that production was needed from Harper's section and that her machine was difficult to learn, I find implausible," (IR - p. 141, l. 28-29)

161.

The finding that,

> 'I do not credif Scharff's testimony that either poor work quality or bad conduct was a reason for Harper's selection for layoff." (IR - p. 142, l. 25-27)

162.

The finding that,

> "The record discloses an additional ground for disbelieving the reasons asserted by Respondent Walton for Harper's selection for layoff." (IR - p. 143, l. 1-3)

163.

The finding that,

> "The failure to compare Finley with Harper is especially significant" (IR - p. 143, l. 11-12)

164.

The finding that,

> "I therefore regard Respondent's failure to compare Harper with Finley, and the discredited and inconsistent reasons asserted for Harper's selection for termination, to be indicative of a determination to dispense with her services for a reason or reasons other than those asserted by Respondent Walton." (IR - p. 143, l. 20-25)

165.

The finding that,

> "I also do not believe that her makeup pay was a reason for Harper's termination." (IR - p. 142, l. 32-33)

166.

The finding that,

> "I place no credence in the reasons asserted by Prosterman for McGee's selection for layoff. His subjective testimony that Finley "had shown greater progress" and "greater potential" is unsupported by any credible specific testimony." (IR - p. 145, l. 25-28)

167.

The finding that,

> "Prosterman's testimony that Finley "earned more money on the job" than McGee, is refuted by a comparison of Respondent Walton's payroll records for these employees." (IR - p. 146, l. 4-6)

168.

The finding that,

> "Prosterman's testimony that Finley earned more money than McGee is without foundation and I do not credit it." (IR - p. 146, l. 16-18)

169.

The finding that,

> "I do not credit Prosterman's subjective testimony that Finley showed "greater potential" and "progress" than McGee, nor that Finley earned more money than McGee, and I do not believe that these were the reasons for McGee's selection for layoff." (IR - p. 147, l. 7-11)

170.

The finding that,

> "I also do not believe that Finley's greater seniority was the real reason McGee was selected for layoff." (IR - p. 147, l. 13-14)

171.

The finding that,

> "I do not believe that seniority was the true reason for McGee's selection for termination." (IR - p. 148, l. 7-8)

172.

The finding and conclusion that,

> "My refusal to credit the reasons assigned by Prosterman for McGee's selection for termination is further based on the fact that although McGee was admittedly a satisfactory employee, she was never rehired although she applied to Respondent for work, and yet new employees with no prior experience were hired by Walton after the layoff." (IR - p. 148, l. 10-15)

173.

The finding that,

> "Nevertheless, Prosterman maintained that the new employees' skills could be better applied than Pauline McGee's. I find this testimony incredible and I refuse to believe it." (IR - p. 148, l. 19-22)

174.

The finding that,

> "My reasons for disbelieving that seniority was the reason for McGee's termination." (IR - p. 148, l. 26-27)

175.

The finding that,

> "For that reason and because I do not regard Scharff as a credible witness generally, I do not believe that Finley's alleged better quality was the reason for McGee's selection for layoff." (IR - p. 148, l. 33 & p. 149, l. 1-3)

176.

The finding that,

> "my general lack of faith in the credibility of Prosterman, Myrtle Ewing and Morris Scharff, I cannot

and do not credit the reasons assigned by Respondent Walton for McGee's selection for layoff." (IR-p. 149, l. 8-11)

177.

The finding that,

"In view of the complete absence of any testimony explaining the method or means by which Hood, rather than one of the other unskilled employees, was selected by Respondent for layoff, and the fact that Hood, an admittedly satisfactory employee had seniority over Francis Green who took over part of Hood's work, and on the entire record herein, I do not believe Respondent's asserted reason for Hood's selection for layoff." (IR - p. 151, l. 1-8)

178.

The finding that,

"My conclusions herein before set forth, that the reasons asserted by Respondents for the selection for layoff of Lela Beaver, Nellie Wood, Evelyn Hudson, Violet Ewing, Bonnie Hamilton, Frances Elizabeth Johnson, Ida Harper, Pauline McGee and Nellie Hood, are unworthy of belief and discredited, are not, of course, the equivalent of a finding that said employees were so selected by reason of their union adherence and/or activity. However, the record herein provides ample support for the latter

conclusion. As I have already found, the Respondents were admittedly hostile to the Union's organizational efforts and upon its inception, took active steps to prevent its success. These steps included: (1) a letter to their employees outlining new benefits, paid vacations and holidays which employees could enjoy without paying "dues or initiation fees to any outside union"; (2) following a union organizer while she was engaged in soliciting membership in the Union; (3) taking down the license numbers of the organizers' cars; (4) anti-union speeches to Respondents' employees in which Morris Scharff, Respondents' principal operating official, threatened to terminate his association with Respondents if the Union became the employees' representative; (5) interrogation of employees regarding attendance at union meetings and the creation of the impression that Respondents had engaged in surveillance of union meetings by stating that Respondents knew everybody who attended; (6) the threat, conveyed by a supervisor to an employee, that Respondents would close down the plant rather than work with union labor; (7) the threat by a supervisor to an employee to "shut up talking about the Union" "if you don't want to dig your own grave"; (8) the threat conveyed by a supervisor to an employee that Respondents would discharge an employee, no matter how competent, if she joined the Union; (9) the promulgation of a rule at the pants plant against talking about the Union, not limited to working hours; (10) the threat by the pants plant superintendent that he would cease attempting to

get work for the employees, if they persisted in talking about the Union; and (11) the discharge of Lucille Yancey, Grace McCart, Pearl Coker and Ruth Brooks, because of activity in support of the Union.[80] Having thus disposed of the threat posed by the employees whom Respondents regarded as the Union ringleaders, the Respondents were then faced with a new threat, the Union's letter naming a dozen members of the Union's volunteer organizing committee. Thereupon, Respondents ascertained by interrogation that at least all but one of the employees named in the letter were steadfast in their union adherence, and seized upon the opportunity presented by the contemplated layoff to get rid of the members of the Union committee." (IR - p. 151, l. 14-33 & p. 152, l. 1-34 & p. 153, l. 1)

179.

The finding that,

"The disparate number of union committee members laid off in the coat plant in relation to the total number laid off in that plant and the total employment therein, is in itself, although not conclusive, persuasive evidence of discrimination." (IR - p. 153, l. 5-7)

180.

The finding that,

> "I am asked to believe that this almost complete elimination from employment of the members of the union's committee is pure coincidence. I find it incredible, not only because of its mathematical improbability,[84] but also because Respondent's total pattern of conduct to resist and defeat the Union's organizational effort, herein persuades me that this was no happenstance. On the contrary, I am persuaded by the entire record, that the cut back in production was utilized by Respondents as a convenient device to carry out the threat of Morris Scharff to remove from their payrolls of known union adherents.[85] I am further persuaded that the Respondents' application in the layoff of a different standard of comparison than that used in the selection of employees in the filling of vacancies, and the nonuniform application of the alleged standards for retention, were merely means utilized by Respondents to achieve a predetermined result, the discharge of the Union's proponents." (IR - p. 153, l. 17-28 & p. 154, l. 1-14)

181.

The finding and conclusion that,

> "On the basis of pure chance and eliminating all other factors, the possibility of selecting for layoff

9 out of 11 union committee members in a total layoff of 16 employees in a plant of 105, is comparable to a blindfolded person picking at least 9 black balls out of 16 picks from a bowl containing 11 black and 94 white balls. The mathematical possibility of such a selection, computed on the basis of the applicable formula, would be one chance out of 2,758,590. See *Uspensky, Introduction*" (IR - p. 153, l. 29-33)

182.

The finding and conclusion that,

"I therefore find and conclude that Respondents selected Lela Beaver, Nellie Wood, Evelyn Hudson, Violet Ewing, Bonnie Hamilton, Frances Elizabeth Johnson, Ida Harper, Pauline McGee and Nellie Hood for layoff because of their membership in the Union's volunteer organizing committee. By such conduct Respondents discriminated in respect to the hire and tenure of employment of said employees, thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act." (IR - p. 154, l. 16-24)

183.

The finding that,

"The activities of the Respondents, set forth in Section III, above, occurring in connection with the

operations of the Respondents described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof." (IR - p. 154, l. 29-30 & p. 155, l. 1-5)

184.

The finding that,

"that both Respondents constitute a single, integrated employer within the meaning of the Act, I shall recommend that both shall be jointly and severally responsible for remedying the unfair labor practices herein. Since I have found that Respondents have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act." (IR - p. 150, l. 9-17)

185.

Exception is taken to the receipt of the affidavits of General Counsel's witnesses into the rejected exhibit file, and the subsequent reading thereof by the Trial Examiner.

186.

The recommendations, and each and every one thereof, and more particularly recommendation 1 (a) and (b); 2

(a), (b), (c), (d) and (e) and the further recommendation that Respondents be required, within 20 days from the date of the receipt of the Intermediate Report to notify the Regional Director that it will comply with said recommendations; and the recommendation that the "National Labor Relations Board issue an order requesting the Respondents to take the aforesaid action." (IR - p. 158, l. 13-33; p. 159, l. 1-32; p. 160, l. 1-32 & p. 161, l. 1-2)

187.

Each and every ruling of the Trial Examiner which was adverse to the Respondents during the course of the trial.

188.

Each, every and all of the findings, conclusions and recommendations which are adverse to the Respondents, to which specific exceptions may or may not have been made hereinabove.

WILSON, BRANCH AND BARWICK

(Signed) By ROBERT T. THOMPSON

(Signed) By J. FRANK OGLETON, JR.

615 Rhodes-Haverty Bldg.
Atlanta 3, Georgia
JAckson 4-3611

CERTIFICATE OF SERVICE

I, ROBERT T. THOMPSON, of counsel for the Respondent in the within and foregoing matter, do hereby certify that I have this day served a copy of the foregoing document upon the following by depositing same in the United States mail, properly addressed, postage prepaid:

Amalgamated Clothing Workers of America, AFL-CIO
14 Union Square
New York 3, New York

Jacob Sheinkman, General Counsel
Amalgamated Clothing Workers of America, AFL-CIO
15 Union Square
New York 3, New York

Arthur C. Joy, Attorney
National Labor Relations Board
Peachtree-Seventh Building
50 Seventh Street, N. E.
Atlanta 23, Georgia.

J. R. Goldthwaite, Jr.
Attorney
Candler Building
Atlanta 3, Georgia

This the 26th day of June, 1959.

(Signed) ROBERT T. THOMPSON
Robert T. Thompson

124 NLRB No. 181

D-998
Monroe, Ga.

DECISION AND ORDER

(Number and Title Omitted)

On May 15, 1959, Trial Examiner Samuel Ross issued his Intermediate Report in the above-entitled proceedings, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also found that the Respondents had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of such allegations. Thereafter, the Respondents, the General Counsel, and the Union filed exceptions to the Intermediate Report, and supporting briefs.

The Board[1] has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

1. With respect to Morris Scharff's anti-union speeches to the employees, we, like the Trial Examiner, are satisfied,

[1] Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

from a comparison of the transcriptions of the speeches with the testimony of the witnesses as to the speeches, that the transcriptions are substantially accurate reproductions of what was said, notwithstanding the absence of the dictaphone tapes initially made of such speeches and the mechanical possibility that portions of what was said might have been omitted from the tapes and/or the transcriptions of the tapes. Thus, as found by the Trial Examiner, the only portion of the transcriptions' version of the speeches which may be viewed as violative of Section 8 (a) (1) was Scharff's threat not to associate with the Respondents if the Union came in. Similarly, while some of the General Counsel's witnesses testified that Scharff expressly said that the plant would close down if the Union came in, most of these witnesses testified that he expressly said only that he would leave if the Union came in, and only one witness testified without any corroboration that Scharff said that if the employees wanted to forget that they had signed for the Union he was willing to forget it too. We also note that Scharff similarly admitted in his testimony concerning his speeches that "I did say that if the union were to come in and organize the plant, that I personally would not be there." Thus, the transcription's version of Scharff's speeches is corroborated by the testimony of most of the General Counsel's witnesses on the subject, and by Scharff's own consistent testimony on the subject which constituted in effect an admission against interest. Moreover, as found by the Trial Examiner, in the context in which it was made, the Respondents' employees could, as many of them apparently did, reasonably interpret Morris Scharff's threat, not to associate with Respondents if the Union came in, as the equivalent of a threat to shut down the plant rather than deal with the Union, and in any event as a threat to

their economic security which was violative of Section 8 (a) (1).[2] In view of these circumstances, we accept the transcriptions of the speeches here as being substantially accurate reproductions of what was said, although we would ordinarily be reluctant to accept dictaphone tapes and/or transcriptions thereof as being accurate because of the mechanical possibility that they might be "altered." Accordingly, we, like the Trial Examiner, accept the transcriptions insofar as the recollection of some of the General Counsel's witnesses differs from the transcriptions, viz., that instead of making an express statement that the plant would be closed if the Union came in, Morris Scharff expressly stated only that he would leave if the Union came in, which statement these General Counsel witnesses reasonably *interpreted* as a threat to close the plant if the Union came in.[3]

2. The Trial Examiner found, and we agree, that in the context in which it occurred, Morris Scharff's interrogation of Grace McCart regarding her attendance at a union meeting and the identity of the employee who had solicited her

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[2] See *Audobon Cabinet Company, Inc.*, 117 NLRB 861, 863, 864, and cases cited. The Trial Examiner found that Morris Scharff similarly stated to employee Lela Beaver shortly after her discriminatory layoff that "if the Union came in, he would go out the back door", but neglected to find that this threat was likewise a violation of Section 8 (a) (1). We so find.

[3] As further stated by the Trial Examiner, this is not to say that Morris Scharff, who is discredited in all other respects, is to be regarded as a truthful witness. It is to say only that, in the circumstances, we regard the *transcriptions* of his speeches, as *corroborated* by most of the General Counsel's witnesses, as being substantially accurate.

As only 1 witness out of 8 testified without corroboration that Morris Scharff also said that if the employees wanted to forget the Union he would too, we do not consider this as sufficient evidence in the circumstances to even be considered as representing a conflict with the transcriptions.

attendance and of others who attended, constituted unlawful interrogation in violation of Section 8 (a) (1). We do not agree, however, with his further finding that, in view of this incident of unlawful interrogation found, it is unnecessary to pass upon the additional incidents of interrogation alleged in the complaint, because no different order would result therefrom. Because of the many other incidents of unlawful interrogation which the record shows were engaged in not only by Morris Scharff but also by Supervisors Gerald Carter, Myrtle Ewing, and Edna Atha, all of which had a substantially further coercive effect on the Respondents' employees, we deem it necessary to make the following additional findings of unlawful interrogation engaged in by the Respondents in violation of Section 8 (a) (1):[4]

(a) Following the discriminatory discharges of employees Lucille Yancey, Grace McCart, Pearl Coker, and Ruth Brooks, and apparently in an effort to discourage further discrimination against its adherents which however was unsuccessful, the Union on January 18, 1958, sent a letter to Respondents advising them that 12 named employees were members of the Union and serving on the "volunteer organizing committee" for the shop, and that these employees "have been fully advised of their rights under the National Labor Relations Act." Upon receipt of this letter, Morris Scharff separately interrogated each of 10 employees named therein as to whether they had authorized the use of their

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[4]In the context of Respondents' admitted hostility to the Union, and all of the other unfair labor practices engaged in by Respondents to thwart by unlawful means their employees' right to self-organization, these other acts of interrogation were clearly unlawful. See *Blue Flash Express, Inc.*, 109 NLRB 591.

names,[5] further interrogated some as to whether they wanted to allow their names to remain in the letter,[6] also in substance threatened some with discharge therefor,[7] and thereafter discriminatorily laid off 9 of the 12 employees named in the letter because of their membership in the "volunteer organizing committee," as ascertained by such interrogation.[8] In these circumstances, it is clear, and we find, that Morris Scharff's individual interrogation of 10 employees[9] as to whether they were members of the Union and of the Union's "volunteer organizing committee," and his further individual interrogation of 4 of these employees as to whether they wanted to remain such, constituted unlawful interrogation in violation of Section 8 (a) (1).

(b) We find that Supervisor Gerald Carter's interrogation of employee Nellie Hood, about the time of Morris Scharff's first anti-union speech to the employees, as to what Hood "knew about the Union", constituted unlawful interrogation.[10]

(c) We find that Supervisor Myrtle Ewing's interrogation of employee Violet Ewing, about 2 weeks after the

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[5]All employees named in the letter were thus interrogated, except Lucy Brooks who was absent, and Lela Beaver who worked in the geographically removed pants plant.

[6]Nellie Wood, Evelyn Hudson, Violet Ewing, and Ida Harper.

[7]Nellie Wood, Evelyn Hudson, Frances Powell, and Ida Harper.

[8]The only employees named in the letter who were not discriminatorily laid off were Jeanette Beaver who did not fully affirm her adherence to the letter, Lucy Brooks who was not interrogated about the letter because she was absent, and Mary Lou Partain who was scheduled for layoff but with respect to whom Respondents changed their minds for some unexplained reason.

[9]Nellie Wood, Evelyn Hudson, Violet Ewing, Frances Elizabeth Powell, Ida Harper, Pauline McGee, Bonnie Hamilton, Nellie Hood, Jeanette Beaver, and Mary Lou Partain.

[10]The Trial Examiner made no finding that this interrogation occurred. We base our finding of fact on Hood's testimony, and Carter's subsequent admission that he so interrogated Hood.

Union organizational campaign began, as to whether the latter knew that there were Union organizers around, constituted unlawful interrogation.

(b) We find that Supervisor Gerald Carter's interrogation of employee Ruth Brooks, employee Nancy Williams, and "two or three" other employees, all within a week of about December 1, 1957, as to whether the Union people had been to see them, constituted unlawful interrogation."

3. We disagree with the Trial Examiner's findings that Superintendent Hughley's promulgation of a rule prohibiting Loganville Pants employees from talking about the Union in the plant, and his accompanying statement that he would cease trying to get work or contracts for the plant, constituted violations of Section 8 (a) (1) of the Act.

As set forth by the Trial Examiner, the evidence on these alleged violations was as follows: Loganville Pants employee Ruth Brooks testified that following a lunch hour argument among the employees in the plant about the Union, Superintendent Hughley cut off the power to the machines and told all the employees: "I am sick and tired about hearing this talk about the Union. I am working trying to get contracts so that you girls can have work, and if this is the way you are going to do, I am through with it." Employee Lela Beaver testified that on this occasion, Hughley said that he had heard enough about the Union and did not want to hear any more about it, that he was tired

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"The Trial Examiner made no findings that these interrogations occurred. We base our findings on the testimony of Brooks and Williams, and Atha's admission that she engaged in these interrogations.

of it, that he did not need the Union to tell him what to do and push him around, and that if the employees had anything to say about the Union, to say it at home or outside the plant, not in the plant. Referring to new contracts, employee Beaver testified that Hughley said he would get them if the Union would leave him alone. According to employee Nancy Williams, Superintendent Hughley said on this occasion, that he would not have any union talk in the shop, that he was trying to get more contracts, but if the employees were not interested, he would not try. According to employee Williams, Hughley's remarks were prompted by the fact that the argument about the Union had continued after the bell to resume work had rung, and some of the girls were not at their machines.

On the basis of the long-established rule that an employer has a right to prevent interference with production by prohibiting union discussion during working hours but no right to prohibit such discussion during non-working time,[12] and on the basis of a finding that the uncontradicted evidence discloses that Hughley's prohibition of union talk in the plant was not limited to working time, the Trial Examiner found that Hughley's announcement of such prohibition was a violation of Section 8 (a) (1). He found further that the argument about the Union which preceded the announcement of the prohibition did not warrant Hughley's threat to cease trying to get work or contracts for the plant, and that such threat interfered with, restrained, and coerced the employees in their right to engage in concerted activities, in violation of Section 8 (a) (1).

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[12] *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U. S. 793; *Peyton Packing Company, Inc.*, 49 NLRB 828, 843, enfd. 142 F. 2d 1009 (C. A. 5); cert. denied 323 U. S. 730.

It is true that Hughley did not specifically limit his prohibition of union talk to working time. However, the uncontradicted testimony of employee Williams shows that Hughley's remarks were prompted by the fact that the argument about the Union had continued after the bell to resume work had rung, and some of the girls were not at their machines. In this context, and considering also the spontaneity and informality of the announced prohibition, we are of the opinion that although Hughley did not *specifically* limit his prohibition of union talk to working time, such was his real purpose in order to prevent a recurrence of the interference with production which had just taken place, and the employees so understood his announcement. We find, therefore, that Hughley in effect promulgated a valid rule against union talk during working time.[13] Moreover, Hughley's accompanying statements about not trying to get any more work or contracts for the plant must also be viewed in the light of these surrounding circumstances. When so viewed, we believe that the most reasonable construction which can be placed upon those statements is that Hughley was trying to get more contracts so that the employees would continue to have work, but if the employees were going to talk about the Union during working time without a proper regard for their work as they had just done, and in violation of the prohibition thereon which he had just announced, he would not try to get any more contracts.[14] Thus, these statements of Hughley were not threats of reprisal in the usual sense for any general union activity of a protected nature that the employees might

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[13]See cases cited in footnote 12, *supra*.
[14]See the testimony of employees Brooks and Williams to this effect, set forth above.

engage in, but were rather in the nature of statements of the disciplinary measures which Hughley would take for a violation of the valid rule against union talk during working time which he had just promulgated, and as such these statements were not unlawful.[15] Accordingly, we shall dismiss the allegations of the complaint that Superintendent Hughley promulgated an unlawful "no-solicitation" rule, and in connection therewith also made unlawful threats of reprisal.

4. The Trial Examiner failed to consider paragraph 19 of the complaint, which alleged that Respondents, by their supervisor and agent, Morris Scharff on or about December 5, 1957, promised a laid-off employee that she would be given a job if the Union did not become the representative of their employees, in violation of Section 8 (a) (1).[16] As factually found by the Trial Examiner, the credited testimony of employee Lucille Yancey shows that on December 5, 1957, the day following her discriminatory discharge, Yancey visited Morris Scharff to inquire about her job and the cause of her discharge, at which time Scharff first admitted in effect that Yancey's Union activity was the reason for her discharge and for that reason he would not put her back to work, but

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[15] As the Board stated in *Peyton Packing Company, Inc., supra*, "The Act, of course, does not prevent an employer from making *and enforcing* reasonable rules covering the conduct of employees on company time. Working time is for work. It is therefore within the province of an employer to promulgate *and enforce* a rule prohibiting union solicitation during working hours." (Emphasis supplied.)

[16] We agree with the Trial Examiner's recommended dismissal of the allegation of the complaint which he designates as paragraph 19, but which should properly be designated as paragraph 20 of the complaint. The Intermediate Report is hereby corrected in that respect.

crimination against her, as provided in the section of the Intermediate Report entitled "The Remedy";

(b) Make whole Nellie Wood, Violet Ewing, Grace McCart, Pearl Coker and Nellie Hood for their respective loss of earnings as a result of the discrimination against them, as provided in the section of the Intermediate Report entitled "The Remedy";

(c) Preserve and make available to the Board or its agents, upon request for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the right to reinstatement under the terms of this Order;

(d) Post at their plant or plants in Loganville, Georgia, copies of the notice attached hereto and marked Appendix.[18] Copies of said notice to be furnished by the Regional Director for the Tenth Region shall, after being duly signed by Respondents, be posted immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places where notices to employees are customarily posted. Respondents shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material;

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[18]In the event this Order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

(e) Notify the aforeaid Regional Director in writing within ten (10) days from the date of this Order what steps the Respondents have taken to comply herewith:

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

Dated, Washington, D. C., Oct. 21, 1959.

Philip Ray Rodgers, Member

Joseph Alton Jenkins, Member

John H. Fanning, Member
NATIONAL LABOR
RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO ALL EMPLOYEES
PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in or activities on behalf of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, by discharging, laying off, or refusing to reinstate any of our employees or in any other manner discriminating against our employees in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT threaten our employees with discharge, shutdown of the plant, or with any other economic sanction to discourage them from joining or assisting labor organizations or engaging in other concerted activities for mutual aid or protection.

WE WILL NOT follow or otherwise engage in surveillance of union organizers or agents, or create the impression of engaging in surveillance of union meetings.

WE WILL NOT coercively or otherwise unlawfully interrogate our employees regarding their union membership or activities.

WE WILL NOT condition the reemployment of laid off employees upon a union not becoming the representative of our employees.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL offer to LUCILLE YANCEY, RUTH BROOKS, LELA BEAVER, BONNIE HAMILTON, PAULINE McGEE, IDA HARPER, FRANCES ELIZABETH POWELL and EVELYN HUDSON, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination against them.

WE WILL also make whole NELLIE WOOD, VIOLET EWING, GRACE McCART, PEARL COKER AND NELLIE HOOD for any loss of pay suffered by them as a result of the discrimination against them.

All our employees are free to become or remain or to refrain from becoming or remaining members of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

WALTON MANUFACTURING COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

Dated _____ By _____
(Representative) (Title)

LOGANVILLE PANTS COMPANY
(Employer)

This notice must remain posted for sixty (60) days from the date hereof and must not be altered, defaced, or covered by any other material.